

177.14 CONSTRUCTION CONTRACTS.

(a) As used in this Section, the following words and terms shall have the following meanings:

- (1) "Architect of record" means the professional design firm that serves as the final signatory on the plans and specifications for a design-build project.
- (2) "Board of Control" means the County of Summit Board of Control.
- (3) "Construction Project" means the construction, reconstruction, improvement, alteration, installation, demolition or repair of any public building or improvement including, but not limited to, roadways, bridges and sewerage.
- (4) "Construction management-at-risk" or "construction management-at-risk services" means a construction method wherein a construction management-at-risk firm provides a range of preconstruction services and construction management services that may include cost estimating and consultation regarding the design of the Construction Project, scheduling, the preparation and coordination of bid packages, cost control, value engineering, detailing the subcontractor scope of work, prequalifying and evaluation subcontractors, and holding the subcontracts.
- (5) "Construction manager-at-risk" or "Construction management-at-risk firm" means an individual, corporation, partnership, sole proprietorship, joint venture, limited liability company, or other legal entity that provides construction management-at-risk services. Nothing contained herein shall prohibit a partnership or joint venture by one or more firms who will jointly serve as the construction manager-at-risk for the Construction Project.
- (6) "Construction manager-at-risk contract" means a contract between the County and a construction manager-at-risk that obligates the construction manager-at-risk to provide construction management-at-risk services for a guaranteed maximum price.
- (7) "County's project manager" means an individual, corporation, partnership, sole proprietorship, joint venture, limited liability company, or other legal entity engaged to provide project management services on behalf of the County for the design and construction of a Construction Project. The County's project manager may be an employee of the County whose assigned responsibility is the management of design and construction of a Construction Project.
- (8) "Criteria architect or engineer" means the professional design firm retained by the County to prepare conceptual plans and specifications or a design professional

who is an employee of the County, to assist the County in connection with the establishment of the design criteria for a design-build project, and, if requested by the County, to serve as the representative of the County and provide, during the design-build project, other design and construction administration services on behalf of the County, including but not limited to, confirming that the design prepared by the design-build firm reflects the original design intent established in the design criteria package.

- (9) "Design-build contract" means a contract between the County and a design-build firm that obligates the design-build firm to provide design-build services.
- (10) "Design-build firm" means any individual, corporation, partnership, sole proprietorship, joint venture, limited liability company or other legal entity that provides design-build services.
- (11) "Design-build services" means services that form an integrated delivery system for which a design-build firm is responsible to the County for both the design and construction, demolition, alteration, repair, or reconstruction of a Construction Project.
- (12) "General contracting" means a construction method wherein a general contracting firm is responsible for constructing and managing a Construction Project under the award of a single aggregate lump sum or guaranteed maximum price contract.
- (13) "General contracting firm" means a person that provides general contracting services.
- (14) "Guaranteed maximum price" or "GMP" means the agreed maximum dollar amount to be paid by the County for the Construction Project, including the cost of the work, the general conditions, agreed construction contingency and the fees charged by the construction management-at-risk firm or design-build firm.
- (15) Non-complex Construction Project" means a Construction Project (1) which has limited opportunity for innovation; (2) where work is within the existing right of way or requires minimal temporary right of way on road or bridge projects; (3) for simple maintenance of traffic; (4) for general refurbishing of building space, including, but not limited to, painting, carpeting, addition of walls and doors and minor electrical and venting; or (5) for the rehabilitation of existing sewer lines.
- (16) "One-step design build process" means a construction delivery method in which the County procures the entirety of the design build services in one step using a single request for bidding ("RFB") or request for proposals ("RFP").

- (17) “Professional design firm” shall have the same meaning as set forth in Section 153.65 of the Ohio Revised Code.
- (18) “RFP” means request for proposals.
- (19) “RFQ” means request for qualifications.
- (20) “Subcontractor” means any individual, corporation, partnership, sole proprietorship, joint venture, limited liability company, or other legal entity that undertakes to provide any part of the labor, equipment or material of a Construction Project under a contract with the a general contracting firm, design-build firm or construction manager-at-risk firm.
- (1) “Two-phase selection process” means a procurement process in which the first phase consists of creating a short list of prequalified firms as determined by responses to a request for qualifications and the second phase consists of inviting firms prequalified in the first phase to submit responses to a request for proposals or a request for bids.
- (b) Contracts for a Construction Project in excess of fifty thousand dollars (\$50,000.00) may be procured by either the general contractor method, design-build method or construction management-at-risk method, as defined and set forth in Subsections (c), (d) and (e), respectively. Upon authorization by Council, which authorization shall include recitation of an estimated cost of proposed services, the Executive, through the Purchasing Division, shall advertise and accept bids for the erection, repair, alteration or rebuilding of a public building, institution, bridge, culvert or improvement, that is estimated to cost in excess of fifty thousand dollars (\$50,000.00), in accordance with the procedures established in Section 177.05. For the erection, repair, alteration or rebuilding of a public building, institution, bridge, culvert or improvement, Contracts for a Construction Project that exceeds five thousand dollars (\$5,000.00) but does not exceed fifty thousand dollars (\$50,000.00), shall be procured by the Purchasing Director, who shall must seek and obtain three written quotes. No contract for a Construction Project that exceeds five thousand dollars (\$5,000.00) but does not exceed fifty thousand dollars (\$50,000.00) may be signed by the Executive unless it has been awarded by the Board of Control. Contracts for a Construction Project For any such project, the cost of which is that are five thousand dollars (\$5,000.00), or less, shall be procured by the Purchasing Director, who is not required to obtain either competitive bids or three written quotes for the same.
- (c) General contracting method. Contracts for a Construction Project which are procured using the general contracting method shall be procured as follows. The Executive, through the Purchasing Division, shall first procure a professional services contract with a professional design firm for the design of the Construction Project pursuant to Section 177.08, if necessary. Following the completion of the design of the Construction Project, including the completion of the plans and specifications for the same, and upon authorization by Council, which authorization shall include recitation of an estimated cost of proposed services, the Executive, through the Purchasing Division, shall advertise and

accept bids for the construction of the Construction Project by a general contractor, in accordance with the procedures established in Section 177.05. Upon the acceptance and review of bids, and the award by the Board of Control of the contract for the Construction Project to the lowest responsive and responsible general contracting bidder, Council may confirm the award by the Board of Control pursuant to Section 177.05. Contracts authorized by this Subsection (ac) may be made through the solicitation of an aggregate bid from a general contracting firm or may be made through the solicitation of separate bids for work and materials from multiple prime contractors relating to the erection, repair, alteration or rebuilding of a public improvement. The County Engineer may combine the design and construction elements of a bridge, highway or safety project into a single contract, which shall not exceed five million dollars (\$5 million), to be awarded pursuant to this Section. The Engineer may request the Director of the Ohio Department of Transportation to review and comment on the scope of work document or the construction plans for conformance with state and federal requirements.

(d) Design-build method. Contracts for a Construction Project which are procured using the design-build method shall be procured as set forth in this Subsection (d).

(1) For every design-build contract, the County shall first obtain the services of a criteria architect or engineer by either contracting for the services consistent with Section 177.08 or by obtaining the services through a design professional who is an employee of the County. After the County has retained a criteria architect or engineer, the County shall develop, with the assistance of the criteria architect or engineer, a scope of work statement that defines the Construction Project and provides prospective design-build firms with sufficient information regarding the County's objectives and requirements. The scope of work statement shall include criteria and preliminary design, general budget parameters, and general schedule requirements to enable prospective design-build firms to submit proposals in response to the RFP issued under this Subsection (d). The criteria architect or engineer retained by the County for a Construction Project shall not be eligible to participate in any way as a member of the design-build team competing for the award of the design-build contract for the Construction Project.

(2) Except as otherwise provided in this Section, the Purchasing Director shall utilize a two-phase selection process as provided in this Subsection (d) to select a design-build firm to provide design-build services.

(3) Before issuing a request for qualifications, hereinafter called RFQ, the Purchasing Director shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted by a design-build firm to the RFQ. The prequalification committee shall be comprised of the Purchasing Director, the Director of Administrative Services, the Deputy Director of Administrative Services for Capital Projects, the Director of the Department or Division for which the Construction Project is being procured, one (1) representative of the criteria architect or engineer, the County's project

manager if the project manager is not already listed above, and any additional representatives of the County as may be deemed appropriate by the Purchasing Director.

- (4) The first phase of the two-phase selection process shall begin once the County gives public notice of the Construction Project and solicits responses to an RFQ from design-build firms. The public notice and solicitation required shall be advertised in a newspaper of general circulation in the County and on the County's website. The public notice and solicitation shall be given not less than two weeks before the deadline for submitting responses to the RFQ. The public notice and solicitation shall include:
- a. the time and date of the deadline for receipt of responses to the RFQ and the address of the office to which the responses are to be delivered;
 - b. If the responses to the RFQ are being procured through an online/electronic procurement process or system, pursuant to Section 177.06(f), the advertisement shall state that the responses to the RFQ are being received electronically and must be submitted electronically, shall state the name of any outside online/electronic procurement process or system used by the County and shall contain pertinent information on how prospective responders may access and/or enroll in said online/electronic procurement process or system to submit a response to the RFQ online;
 - c. a general description of the Construction Project and key factors important to the final selection of the design-build;
 - d. a general description of the scope of services expected of the selected design-build firm during the design, pre-construction and construction phases of the Construction Project;
 - e. a general description of the anticipated schedule and estimated construction cost for the Construction Project; and
 - f. the criteria for the selection of the design-build firm, including minimum experience, requirements for presentations/interviews, and the schedule for the selection process.
- (5) The County shall require interested design-build firms to submit a statement of qualifications in response to the RFQ. The statement of qualifications shall include the following:

- a. a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other potential qualified responders;
 - b. completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and financial statement;
 - c. a list of all convictions or fines assessed against the design-build firm or any of its officers or directors for violations of state or federal law;
 - d. submission of a project organization chart with specific information on key project personnel or consultants, including the architect of record;
 - e. a letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the Construction Project;
 - f. submission of information on the firm's safety record including its workers' compensation experience modifier for the prior three years;
 - g. submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
 - h. submission of information regarding the experience of the design-build firm and the architect of record on similar projects, including contact information of owners of the projects;
 - i. submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy; and
 - j. the affidavit required pursuant to Subsection (f), below; and
 - k. any other relevant information that the County determines desirable.
- (6) The prequalification committee shall evaluate each statement of qualifications submitted by design-build firms. The evaluation shall take into account the following factors: (i) competence to perform the required design-build services as indicated by the technical training, education, and experience of the design-build firm's personnel and key consultants, especially the technical training, education, and experience of the employees and consultants of the design-build firm who would be assigned to perform the services, including

the proposed architect of record; (ii) ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design services or design-build services competently and expeditiously; (iii) past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines; and (iv) any other relevant factors as determined by the County.

- (7) Out of the design-build firms that submitted responses to the RFQ, the prequalification committee shall select a minimum of three qualified design-build firms to receive the request for proposals, unless less than three firms responded to the RFQ, in which event, the prequalification committee may select less than three qualified design-build firms to receive the request for proposals. The decision of the prequalification committee shall be posted on the County's web site. Once posted on the County's web site, the decision of the prequalification committee is final and shall not be subject to appeal except to the Board of Control on grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Board of Control during business hours on a working day no later than five calendar days of the posting of the prequalification committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.
- (8) The County shall issue an RFP to each design-build firm selected to receive an RFP pursuant to this Subsection (d)(7), above. The RFP shall include:
- a. the date, time and place for submission of proposals;
 - b. clear description of the submission requirements including separate price and technical components;
 - c. the design criteria produced by the criteria architect or engineer;
 - d. the small business enterprise inclusion goals and workforce inclusion goals for the Construction Project, if applicable;
 - e. the form of design-build services contract; and
 - f. any other relevant information that the County determines desirable.

- (9) The RFP shall require the submission of separate price and technical components as part of the proposal submitted in response to the RFP.
- a. The price component shall, in a separate sealed submission, include: (i) the fee for design services, including the fee of the architect of record, with appropriate detail, (ii) the fee for preconstruction services, with appropriate detail, (iii) the fee for design-build services with explanation of the basis, (iv) the estimated cost of general conditions, with appropriate detail, and (v) the estimated design and contingency requirements regarding development of the GMP.
 - b. The technical component shall include: (i) a detailed project approach, including preconstruction and design services, (ii) supplemental relevant project references, (iii) the project team members with position descriptions and relevant time commitments and billing rates of said team members during the project, and (iv) the construction management plan indicating their approach to controlling cost, schedule, quality, documents and claims.
- (10) There shall be a selection committee that shall review the responses to the RFP, and the selection committee shall consist of the same individuals as the prequalification committee. Upon receipt of the responses to the RFP, the selection committee shall evaluate all proposals and rank firms based on the selection committee's evaluation of each firm's pricing proposal and qualifications. If the selection committee elects to conduct an interview with a design-build firm who submits a proposal in response to the RFP, then the selection committee shall conduct interviews with each design-build firm that submits a proposal to the RFP. The decision of the selection committee shall be posted on the County's web site. Once posted on the County's web site, the decision of the selection committee is final and not subject to appeal except to the Board of Control on the grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Board of Control during business hours on a working day no later than five calendar days of the posting of the selection committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.
- (11) The selection committee shall commence negotiations with the highest ranked design-build firm. If the selection committee determines that negotiations with the highest ranked design-build firm will not result in a

contract acceptable to the County, then the selection committee shall terminate negotiations with the highest ranked design-build firm and shall commence negotiations with the next highest ranked design-build firm. The process shall continue until the selection committee has reached an acceptable contract with one of the prequalified design-build firms. Upon reaching an acceptable contract with one of the design-build firms, the same shall be presented to the Board of Control, who may award the same to that design-build firm, subject to confirmation of the award by County Council. No contract with any design-build firm may be executed by the Executive without the award of the Board of Control and confirmation by County Council. The list and ranking of proposed design-build firms shall be certified by the Purchasing Director and made available as a public record after the contract award.

- (12) Each contract for a Construction Project procured pursuant to the design-build method shall utilize a cost-plus, not-to-exceed guaranteed maximum price form of contract in which the County shall be entitled to monitor and audit all project costs.
- (13) In establishing the schedule and process for determining a guaranteed maximum price, the contract between the County and the design-build firm shall comply with the following:
- a. The guaranteed maximum price shall be based on design documents that are no less developed than a percentage determined by the selection committee;
 - b. The guaranteed maximum price shall be agreed to as an amendment to the contract between the County and the design-build firm;
 - c. The guaranteed maximum price amendment shall be executed before the commencement of any construction work; except that the County, before the execution of the guaranteed maximum price amendment, may commence construction, so long as the County executes a separate amendment to the contract with the design-build firm detailing the scope of work selected to commence before execution of the guaranteed price amendment, and provided that each subcontractor performing work shall provide a payment and performance bond in the amount of its subcontract, which such bond shall name the County and the design-build firm as co-obligees. The separate amendment shall state the sum for the scope of work, which shall include the cost of the work, the general conditions and additional fee, if any, for the design-build firm; but, any class of work included in the scope of work selected to commence before the execution of the guaranteed maximum price amendment shall be subject to the subcontractor selection process set forth in Subsection (d)(14), below. If a

guaranteed maximum price cannot be successfully negotiated between the County and the design-build firm, then any subcontractor agreement between the design-build firm and a subcontractor for work selected to commence before execution of the guaranteed maximum price amendment may be assigned to the County or to another design-build firm designated by the County, without the assent of the subcontractor, and the County or the designated design-build firm and the subcontractor shall be bound by the terms of the subcontractor agreement; and

- d. The guaranteed maximum price amendment to the contract between the County and the design-build firm shall include a detailed line item cost breakdown by trade, including any cost for work selected to commence before the execution of the guaranteed maximum price amendment; dollar amounts for the design-build firm's design and construction contingencies; dollar amounts for the general conditions and fees, including any amounts related to work selected to commence before the execution of the guaranteed maximum price amendment; a list of all the drawings, specifications and other information on which the guaranteed maximum price is based; a list of allowances and statement of their basis; a list of any assumptions or clarifications on which the guaranteed maximum price is based; the dates for substantial and final completion on which the guaranteed maximum price is based; and a schedule of applicable alternates and unit prices.
- e. The design-build firm shall provide all required performance and payment bonds in the amount of the guaranteed maximum price within five business days after the execution of the guaranteed maximum price amendment.
- f. If a guaranteed maximum price cannot be successfully negotiated between the County and the design-build firm, then the selection committee may commence negotiations with an additional proposer starting with the next highest ranked proposer. If a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked proposer, then the County shall terminate the procurement process and may instead procure the Construction Project under any other project delivery method permitted by law.
- g. Upon reaching an acceptable guaranteed maximum price amendment with the design-build firm, the same shall be presented to the Board of Control, who may award the same to that design-build firm, subject to confirmation of the award by County Council. No guaranteed maximum price amendment may be executed by the Executive without the award of the Board of Control and confirmation by County

Council. Furthermore, any amendment to the construction contract pursuant to Subsection (d)(13)(c), above, to commence construction prior to the guaranteed maximum price amendment shall also be presented to the Board of Control, who may award the same to that design-build firm, subject to confirmation of the award by County Council. No such amendment may be executed by the Executive without the award of the Board of Control and confirmation by County Council.

(14) Each design-build contract with a design-build firm shall include terms that require the following procedures to be observed in connection with the award of subcontracts under the design-build contract:

a. Prior to the award of any subcontract with an estimated subcontract value, the design-build firm shall submit to the selection committee for approval the qualifications that a subcontractor must have in order to perform the work of the subcontract and a list of at least three subcontracting firms that the design-build firm believes meets the qualifications. The selection committee may eliminate from the list persons or firms that the selection committee believes are not qualified, based on the criteria mentioned in the scope of services, or to which the selection committee has other reasonable objections. The design-build firm shall revise the list unless in accordance with the selection committee's eliminations. The selection committee shall inform the design-build firm of its eliminations of any persons or firms proposed by the design-build firm, within ten working days after the selection committee's receipt of the list. If the selection committee disapproves of a proposed bidder, the written notice to the design-build firm shall set forth the selection committee's objections of the proposed bidder(s). The design-build firm shall not solicit bids or proposals from any person or firm to whom the selection committee has made objections.

b. The selection committee's elimination of any proposed subcontractor(s) under is final and not subject to appeal except to the Board of Control on grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Board of Control during business hours on a working day no later than five calendar days of the design-build firm's receipt of the selection committee's objections. If the fifth calendar day falls on a weekend or a legal holiday on which the County is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's

determination of the appeal shall not be subject to any further appeals or any other challenges.

- c. After the design-build firm and the selection committee have agreed upon an acceptable list of potential subcontractors, the design-build firm shall solicit at least three competitive bids or proposals (including design-assist bids or proposals) from subcontractors on the list of approved subcontractors. All bids or proposals submitted shall be sealed and shall not be opened before the bid opening date set forth in the solicitation.
 - d. On the date set forth in the solicitation, the design-build firm shall open, in the presence of the selection committee, all bids or proposals. The selection committee shall have the right to be present at all post-opening scope review meetings of the design-build firm and the proposed subcontractors.
 - e. Giving consideration to the price and the qualifications of each person or firm submitting a bid or proposal, the design-build firm shall recommend for award the subcontractor whose bid or proposal represents the best value, and such recommendation shall be submitted to the selection committee with a written report setting forth the reasons supporting the recommendation. The selection committee shall have the right to object to the proposed award if it determines that the person or firm proposed does not represent the best value. If the selection committee objects to the proposed award, it shall do so by sending written notice of such objection within ten days after the selection committee 's receipt of the design-build firm's recommendation report, and such written notice shall set forth the selection committee 's reasons for objecting. If the selection committee does not disapprove the bidder recommended by the design-build firm, then the design-build firm shall award the subcontract to the recommended bidder.
 - f. Each subcontract shall expressly name the County as an intended third-party beneficiary with the right to sue and recover under said subcontract.
- (15) The Executive shall utilize the forms prescribed by the Ohio Facilities Construction Commission for design-build projects for state agencies in carrying out the provisions of this Subsection (d), with such modifications as the Executive determines reasonable and necessary.
- (16) For non-complex Construction Projects, as determined by the Purchasing Director, the County may opt to utilize a one-step design build-process.

(e) Construction Management-at-risk method. Contracts for a Construction Project which are procured using the construction management-at-risk method shall be procured as set forth in this Subsection (e).

- (1) The Executive, through the Purchasing Division, shall utilize a two-phase selection process as provided in this Subsection (e) to select a construction management-at-risk firm to provide construction management-at-risk services.
- (2) Before issuing a request for qualifications, hereinafter called RFQ, the Purchasing Director shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted by a construction manager-at-risk to the RFQ. The prequalification committee shall be comprised of the Purchasing Director, the Director of Administrative Services, the Deputy Director of Administrative Services for Capital Projects, the Director of the Department or Division for which the Construction Project is being procured, one (1) representative of the professional design firm, the County's project manager if the project manager is not already listed above, and any additional representatives of the County as may be deemed appropriate by the Purchasing Director.
- (3) The first phase of the two-phase selection process shall begin once the County gives public notice of the Construction Project and solicits responses to an RFQ from construction management-at-risk firms. The public notice and solicitation Section shall be advertised in a newspaper of general circulation in the county and on the County's website. The public notice and solicitation shall be given not less than thirty (30) days before the deadline for submitting responses to the RFQ. The public notice and solicitation shall include:
 - a. The time and date of the deadline for receipt of responses to the RFQ, the address of the office to which the responses are to be delivered;
 - b. If the responses to the RFQ are being procured through an online/electronic procurement process or system, pursuant to Section 177.06(f), the advertisement shall state that the responses to the RFQ are being received electronically and must be submitted electronically, shall state the name of any outside online/electronic procurement process or system used by the County and shall contain pertinent information on how prospective responders may access and/or enroll in said online/electronic procurement process or system to submit a response to the RFQ online;
 - c. A general description of the Construction Project and key factors important to the final selection of the construction management-at-risk firm;

- d. A general description of the scope of services expected of the selected construction management-at-risk firm during the design, pre-construction, construction, and post construction phases of the Construction Project;
 - e. A general description of the anticipated schedule and estimated construction cost for the Construction Project; and
 - f. The criteria for the selection of the construction management-at-risk firm, including minimum experience, requirements for presentations/interviews, and the schedule for the selection process.
- (4) The County shall require interested construction management-at-risk firms to submit a statement of qualifications in response to the RFQ. The statement of qualifications shall include the following:
- a. A cover letter or executive summary detailing the key elements and factors that differentiate the firm from other potential qualified responders;
 - b. Completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and a financial statement;
 - c. A list of all convictions or fines assessed against the construction management-at-risk firm or any of its officers or directors for violation of state or federal law;
 - d. Submission of a project organization chart with specific information on key project personnel or consultants;
 - e. A letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the Construction Project;
 - f. Submission of information on the firm's safety record including its worker's compensation experience modifier for the prior three (3) years;

- g. Submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
 - h. Submission of information regarding the firm's experience on similar projects including contact information of the architects and owners of the projects;
 - i. Submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy; and
 - j. the affidavit required pursuant to Subsection (f), below; and
 - k. Any other relevant information that the County determines desirable.
- (5) The prequalification committee shall evaluate each statement of qualifications submitted by the construction management-at-risk firms. The evaluation shall take into account the following factors: (i) competence to perform the required construction management-at-risk services as indicated by the technical training, education, and experience of the construction management-at-risk firm's personnel and key consultants, especially the technical training, education and experience of the employees and consultants of the construction management-at-risk firm who would be assigned to perform the services; (ii) ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required preconstruction and construction services competently and expeditiously; (iii) past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines; and (iv) any other relevant factors as determined by the County.
- (6) Out of the construction management-at-risk firms that submitted responses to the RFQ, the prequalification committee shall select a minimum of three (3) qualified construction management-at-risk firms to receive the request for proposals, hereinafter RFP, unless less than three (3) firms responded to the RFQ, in which event the prequalification committee may select less than three (3) qualified construction management-at-risk firms to receive the RFP. The decision of the prequalification committee shall be posted on the County's website. Once posted on the County's website, the decision of the prequalification committee is final and shall not be subject to appeal except to the Board of Control on grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Board of Control during business hours on a working day no later than five calendar days of the posting of the

prequalification committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

(7) The County shall issue an RFP to each construction management-at-risk firm selected to receive an RFP pursuant to Subsection (e)(6), above. The RFP shall include:

- a. The date, time and place for submission of proposals;
- b. If the responses to the RFQ are being procured through an online/electronic procurement process or system, pursuant to Section 177.06(f), the advertisement shall state that the responses to the RFQ are being received electronically and must be submitted electronically, shall state the name of any outside online/electronic procurement process or system used by the County and shall contain pertinent information on how prospective responders may access and/or enroll in said online/electronic procurement process or system to submit a response to the RFQ online;
- c. A clear description of the submission requirements including separate price and technical components;
- d. Any small business enterprise inclusion goals and workforce inclusion goals for the Construction Project, if applicable;
- e. The form of construction management-at-risk contract; and
- f. Any other relevant information that the County determines desirable.

(8) The RFP shall require the submission of separate price and technical components as part of the proposal submitted in response to the RFP.

- a. The price component shall include: (i) the fee for preconstruction services with appropriate detail, (ii) the fee for construction services with explanation of the basis, (iii) the estimated cost of general

conditions with appropriate detail, and (iv) the estimated construction contingency requirements regarding the development of the GMP.

- b. The technical component shall include: (i) a detailed project approach, including preconstruction services, (ii) supplemental relevant project references, (iii) the project team members with position descriptions and relevant time commitments and billing rates of said team members during the project, and (iv) the construction management plan indicating their approach to controlling cost, schedule, quality, documents and claims.
- (9) There shall be a selection committee that shall review the responses to the RFP, and the selection committee shall consist of the same individuals as the prequalification committee. Upon receipt of the responses to the RFP, the selection committee shall evaluate all proposals and rank firms based on the selection committee's evaluation of each firm's pricing proposal and qualifications. If the selection committee elects to conduct an interview with a construction management-at-risk firm who submits a proposal in response to the RFP, then the selection committee shall conduct interviews with each construction management-at-risk firm that submits a proposal to the RFP. The decision of the selection committee shall be posted on the County's website. Once posted on the County's website, the decision of the selection committee is final and subject to appeal to the Board of Control only on the grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Board of Control during business hours on a working day no later than five calendar days of the posting of the selection committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.
- (10) The selection committee shall commence negotiations with the highest ranked construction management-at-risk firm. If the selection committee determines that negotiations with the highest ranked construction management-at-risk firm will not result in a contract acceptable to the county, then the selection committee shall terminate negotiations with the highest ranked construction management-at-risk firm and shall commence negotiations with the next highest ranked construction management-at-risk firm. The process shall continue until the selection committee has reached an

acceptable contract with one of the prequalified construction management-at-risk firms. Upon reaching an acceptable contract with one of the construction management-at-risk firms, the same shall be presented to the Board of Control, who may award the same to that construction management-at-risk firm, subject to confirmation of the award by County Council. No contract with any construction management-at-risk firm may be executed by the Executive without the award of the Board of Control and confirmation by County Council. The list and ranking of proposed construction management-at-risk firms shall be certified by the Purchasing Director and made available as a public record after the contract award.

- (11) Each contract for a Construction Project procured pursuant to this construction manager-at-risk method, shall utilize a cost-plus, not-to-exceed guaranteed maximum price form of contract in which the County shall be entitled to monitor and audit project costs.
- (12) In establishing the schedule and process for determining a guaranteed maximum price, the contract between the County and the construction management-at-risk firm shall comply with the following:
 - a. The guaranteed maximum price shall be based on design documents that are no less developed than a percentage determined by the selection committee;
 - b. The guaranteed maximum price shall be agreed to as an amendment to the contract between the County and the construction management-at-risk firm;
 - c. The guaranteed maximum price amendment shall be executed before the commencement of any construction work; except that the County, before the execution of the guaranteed maximum price amendment, may commence construction, so long as the County executes a separate amendment to the contract with the construction manager-at-risk detailing the scope of work selected to commence before execution of the guaranteed price amendment, and provided that each subcontractor performing work shall provide a payment and performance bond in the amount of its subcontract, which bond shall name the County and the construction manager-at-risk as co-obligees. The separate amendment shall state the sum for the scope of work, which shall include the cost of the work, the general conditions and additional fee, if any, for the construction manager-at-risk; but, any class of work included in the scope of work selected to commence before the execution of the guaranteed maximum price amendment

shall be subject to the subcontractor selection process set forth in Subsection (e)(13), below. If a guaranteed maximum price cannot be successfully negotiated between the County and the construction manager-at-risk, then any subcontractor agreement between the construction manager-at-risk and a subcontractor for work selected to commence before the execution of the guaranteed maximum price amendment may be assigned to the County or to another construction manager-at-risk designated by the County, without assent of the subcontractor, and the County or the designated construction manager-at-risk and the subcontractor shall be bound by the terms of the subcontractor agreement; and

- d. The guaranteed maximum price amendment to the contract between the County and the construction management-at-risk firm shall include a detailed line item cost breakdown by trade, including any cost for work selected to commence before the execution of the guaranteed maximum price amendment; dollar amounts for the construction management-at-risk firm's construction contingency; dollar amounts for the general conditions and fees, including any amounts related to work selected to commence before the execution of the guaranteed maximum price amendment; a list of all the drawings, specifications, and other information on which the guaranteed maximum price is based; a list of allowances and statement of their basis; a list of any assumptions or clarifications on which the guaranteed maximum price is based; the dates for substantial and final completion on which the guaranteed maximum price is based; and a schedule of applicable alternates and unit prices.
- e. The construction management-at-risk firm shall provide all required performance and payment bonds in the amount of the guaranteed maximum price within five (5) business days after the execution of the guaranteed maximum price amendment.
- f. If a guaranteed maximum price cannot be successfully negotiated between the County and the construction management-at-risk firm, then the selection committee may commence negotiations with an additional proposer starting with the next highest ranked proposer. If a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked proposer, then the County shall terminate the procurement process and may instead procure the Construction Project under any other project delivery method permitted by this Section.

- g. Upon reaching an acceptable guaranteed maximum price amendment with the construction management-at-risk firm, the same shall be presented to the Board of Control, who may award the same to that construction management-at-risk firm, subject to confirmation of the award by County Council. No guaranteed maximum price amendment may be executed by the Executive without the award of the Board of Control and confirmation by County Council. Furthermore, any amendment to the construction contract pursuant to Subsection (e)(12)(c), above to commence construction prior to the guaranteed maximum price amendment shall also be presented to the Board of Control, who may award the same to that construction management-at-risk firm, subject to confirmation of the award by County Council. No such amendment may be executed by the Executive without the award of the Board of Control and confirmation by County Council.
- (13) Each construction contract with a construction manager-at-risk shall include terms that require the following procedures to be observed in connection with the award of subcontractors under the construction manager-at-risk:
- a. Prior to the award of any subcontract with an estimated subcontract value the construction manager-at-risk shall submit to the selection committee for approval the qualifications that a subcontractor must have in order to perform the work of the subcontract and a list of at least three (3) subcontracting firms that the construction manager-at-risk believes meets the qualifications. The selection committee may eliminate from the list persons or firms that the selection committee believes are not qualified, based on the criteria mentioned in the scope of services, or to which the selection committee has other reasonable objections. The construction manager-at-risk shall revise the list in accordance with the selection committee's eliminations. The selection committee shall inform the construction manager-at-risk of its elimination of any persons or firms proposed by the construction manager-at-risk within ten (10) working days after the selection committee's receipt of the list. If the selection committee disapproves of a proposed bidder, the written notice to the construction manager-at-risk shall set forth the objections of the proposed bidder(s). The construction manager-at-risk shall not solicit bids or proposals from any person or firm to whom the selection committee has made objections.
- b. The selection committee's elimination of any proposed subcontractor is final and not subject to appeal except to the Board of Control on

grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Board of Control during business hours on a working day no later than five calendar days of the construction manager-at-risk's receipt of the selection committee's objections. If the fifth calendar day falls on a weekend or a legal holiday on which the County is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

- c. After the construction manager-at-risk and the selection committee have agreed upon an acceptable list of potential subcontractors, the construction manager-at-risk shall solicit at least three (3) competitive bids or proposals (including design-assist bids or proposals), from subcontractors on the list of approved subcontractors. All bids or proposals submitted shall be sealed and shall not be opened before the bid opening date set forth in the solicitation.
- d. On the date set forth in the solicitation, the construction manager-at-risk shall open, in the presence of the selection committee, all bids or proposals. The selection committee shall have the right to be present at all post-opening scope review meetings of the construction manager-at-risk and the proposed subcontractors.
- e. Giving consideration to the price and the qualifications of each person or firm submitting a bid or proposal, the construction manager-at-risk shall recommend for award the subcontractor whose bid or proposal represents the best value, and such recommendation shall be submitted to the selection committee with a written report setting forth the reasons supporting the recommendation. The selection committee shall have the right to object to the proposal award if it determines that the person or firm proposed does not represent the best value. If the selection committee objects to the proposed award, it shall do so by sending written notice of such objection within ten (10) days after the selection committee's receipt of the construction manager-at-risk's recommendation report, and such written notice shall set forth the selection committee's reason for objecting. If the selection committee does not disapprove the bidder recommended by the construction

manager-at-risk, then the construction manager-at-risk shall award the subcontract to the recommended bidder.

f. Each subcontractor shall expressly name the County as an intended third-party beneficiary with the right to sue and recover under said subcontract.

(14) The Executive shall utilize the forms prescribed by the Ohio Facilities Construction Commission for construction management-at-risk projects for state agencies in carrying out the provisions of this Subsection (e), with such modifications as the Executive determines reasonable and necessary.

(f) ~~Contracts authorized by Subsections (a) and (b) hereof, with the exception of those below five thousand dollars (\$5,000.00), shall be awarded by the Board of Control. For Any construction contract procured through the general contracting, design-build or construction manager-at-risk methods, as set forth in Subsections (c), (d) and (e), above, competitive bid, which is therefore in excess of fifty thousand dollars (\$50,000.00), the Board of Control shall consider the responsibility of the bidder only be entered into by the County with a responsible firm. In order for any bidder submitting a bid for a construction contract firm to be considered a responsible firm under this Subsection, to be considered responsible, the bidder firm shall meet each of the following criteria:~~

- (1) The firm contractor shall identify three (3) public works projects that are each within seventy five percent (75%) of the bid estimate for the Public Project that were successfully completed by the firm contractor within the last five (5) years.
- (2) The firm contractor shall certify that it will employ supervisory personnel on the Public Project that have five (5) or more years' experience in the specific trade needed for the Public Project.
- (3) The firm contractor shall certify that, in the last five (5) years, it has not been penalized or debarred from any public works project for certified payroll records violations or any violation of the Fair Labor Standards Act.
- (4) The firm contractor shall certify that it has not been debarred from any public works projects for any prevailing wage violations; or been found (after all appeals) to have violated prevailing wage laws more than three (3) times in the last five (5) years.
- (5) The firm contractor shall certify that it is in compliance with Ohio's Drug Free Workplace Program, including but not limited to, maintaining a substance abuse policy that governs its personnel who will work on the Public Project and shall provide evidence of the same.

- (6) The firm contractor shall certify that it has not been debarred from any public contract, federal, state, or local, in the past five (5) years for any reason other than those set forth in Subsections (3), (4) and (5), above.
- (7) The firm contractor, for a licensed trade contract or fire safety contract shall certify that the firm contractor is licensed pursuant to Chapter 4740 of the Ohio Revised Code as a heating, ventilating and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, hydronics contractor or certified by the State Fire Marshall pursuant to Section 3737.65 of the Ohio Revised Code, and shall provide evidence of the same.
- (8) The firm contractor shall certify that it has not had any professional license revoked in the past five (5) years in the State of Ohio or in any other state.
- (9) The firm contractor shall certify that it has no final judgments against it that have not been satisfied at the time of certification.
- (10) The firm contractor shall certify that it has complied with all applicable unemployment and workers compensation laws for the three (3) years preceding the date of its certification.
- (11) The firm contractor shall certify that it will notify the Income Tax Authority of the city, village, township or joint economic development district where the Public Project is located, prior to beginning work on the Public Project, of any independent contractor(s) or subcontractor(s) and/or IRS Form 1099 employee(s) that will be used on the Public Project.
- (12) The firm contractor shall certify that it will use construction employees on the Public Project who were trained in a state or federally approved apprenticeship program, or who are currently enrolled in a state or federally approved apprenticeship program, or who have at least four (4) years of experience in their particular trade.
- (13) The firm shall certify that it and its subcontractors or any other contractor performing work on the Public Project pursuant to a contract with the firm contractor shall pay the prevailing wage rate and comply with the other provisions set forth in Ohio's Prevailing Wage Law, R.C. 4115.03 through 4115.16, and O.A.C. 4101:9-4-01 through 4101:9-4-28. This includes, but is not limited to, the filing of certified payroll reports.
- (14) The firm contractor shall certify that it will make its best efforts to secure and utilize construction employees primarily from Summit County and, secondarily, from counties that are contiguous to Summit County. ~~In the event the DFA is financing a Public Project in another county, the contractor shall certify that it will make its best efforts to secure and utilize~~

~~construction employees primarily from the County in which the Public Project is situated and from contiguous counties.~~

In order to ensure that a firm bidder meets and will continue to meet the above criteria during the term of the eConstruction pProject, any firm person or entity submitting a bid, response to a request for qualifications or response to a request for proposals shall include in that firm's person or entity's bid or response an affidavit certifying that it meets each of the above criteria, will continue to meet each of the above criteria during the term of the construction contract, and shall attach to said affidavit any information or documents required by said criteria. A notice of the above criteria shall be included with the plans and specifications, request for qualifications and request for proposals for the Construction Project, ~~project to be constructed that are made available to any potential bidders~~. Additionally, any construction the contract entered into between the County and ~~the prevailing bidder~~ any firm shall contain provisions requiring the ~~prevailing bidder~~ firm to abide by said criteria during the term of the contract.

- (g) Any necessary alteration or addition to the plans, drawings, representations, bills of materials, specifications of work or estimates of cost, the cost of which does not exceed three percent (3%) of the total contract amount, may be made upon field approval by the applicable administrative department director or authorized representative. Field approvals shall be submitted for review by the Executive who may authorize payment of necessary and reasonable costs in writing which shall be certified pursuant to Ohio R.C. 5705.41 and any amendments thereto.
- (h) In the event additions to a construction contract cumulatively exceed fifteen percent (15%) or fifteen thousand dollars (\$15,000.00), whichever is greater, of the original contract amount, subsequent additions or deletions in any amount shall be authorized by the Board of Control, executed by the Executive, and certified pursuant to Ohio R.C. 5705.41 and any amendments thereto.
- (i) In the event additions to a construction contract cumulatively exceed thirty percent (30%) or twenty-five thousand dollars (\$25,000.00) whichever is greater, of the original contract amount, subsequent additions or deletions in any amount shall be approved by County Council after the change is authorized by the Board of Control.
- (j) In the event of immediate danger involving the health and safety of property, employees or the public arising during the performance of a contract which requires modification of performance, the provisions hereof shall not prohibit necessary modifications; however, payment of necessary and reasonable costs attributable to such modification shall be made only upon authorization of the Board of Control or the Council as provided herein.
- (k) Notification of any emergency modification pursuant to Subsection (j) hereof, shall be provided by the Executive to Council.

- (l) The County Executive shall have the right to take measures to encourage fair and equitable participation by all segments of the County's residents in any Construction Project, and shall include in the request for proposals and plans and specifications for the Construction Project any such measure.
- (m) The County Executive may execute a Project Labor Agreement ("PLA") with the Tri-County Building and Construction Trades Council, its successor, or any union that is a member of the Council, or its successor, for the construction of any capital improvement in the County of Summit where the total construction cost exceeds five hundred thousand dollars (\$500,000.00).