



**BOARD OF
REGENTS**
STATE OF IOWA

ALTERNATIVE DELIVERY METHOD GUIDELINES

a set of definitions and procedures

About the *Alternative Delivery Method Guidelines*

Established in January 2018, the Board of Regents' *Alternative Delivery Method Guidelines* were developed by the University of Iowa, Iowa State University, University of Northern Iowa and Board Office as a set of definitions and step-by-step procedures for new and existing staff involved in the design and construction of our facilities.

On June 14, 2022, Senate File 183 was signed into law, defining Construction Manager at Risk and authorizing it statewide, while prohibiting Design Build. At that time, the Regents had done 18 Design Build with project budgets ranging from \$1.6 million to \$95 million, averaging \$26 million. Subsequently, Design Build was removed from the Board of Regents' *Alternative Delivery Method Guidelines*, along with Construction Manager – Agent.

Table of Contents

Section	Page
1. Authority to Use Construction Manager at Risk	2
2. Construction Manager at Risk Considerations	3
3. Construction Manager at Risk Advantages	4
4. Design Bid Build	6
4.1 Design Bid Build Definition	6
5. Construction Manager at Risk	7
5.1 CMR Definition	7
5.2 CMR Use	8
5.2.1 Board Approval	8
5.3 CMR Selection Procedures	8
5.3.1 General Requirements	8
5.3.2 Intent to Enter into a CMR Contract	9
5.4 Request for Qualifications (RFQ)	9
5.4.1 RFQ Posting	9
5.4.2 RFQ Opening	10
5.5 Request for Proposals (RFP)	9
5.5.1 RFP Technical Proposal	10
5.5.2 RFP Technical Proposal Interview	12
5.5.3 RFP Cost Proposal	12
5.5.4 RFP Cost Proposal Evaluation	13
5.6 CMR Selection	13
5.7 CMR's Subcontractors	14
5.7.1 CMR's Self-Performance of Trade Contract Work and Materials Packages	15

1. Authority to Use Construction Manager at Risk

- a. *Iowa Code* §26A.1, part 3 states that a “University means the state, political subdivisions of the state, public school corporations and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements, including the state board of regents.”
- b. *Iowa Code* §26A.1, part 4 states that a “guaranteed maximum price contract means the agreed to fixed or guaranteed maximum price pursuant to a contract entered into by the Construction Manager at Risk and the University.”
- c. *Iowa Code* §26A.2 states that a “University shall be authorized to enter into a guaranteed maximum price contract for the construction of a public improvement.”

2. Construction Manager at Risk Considerations

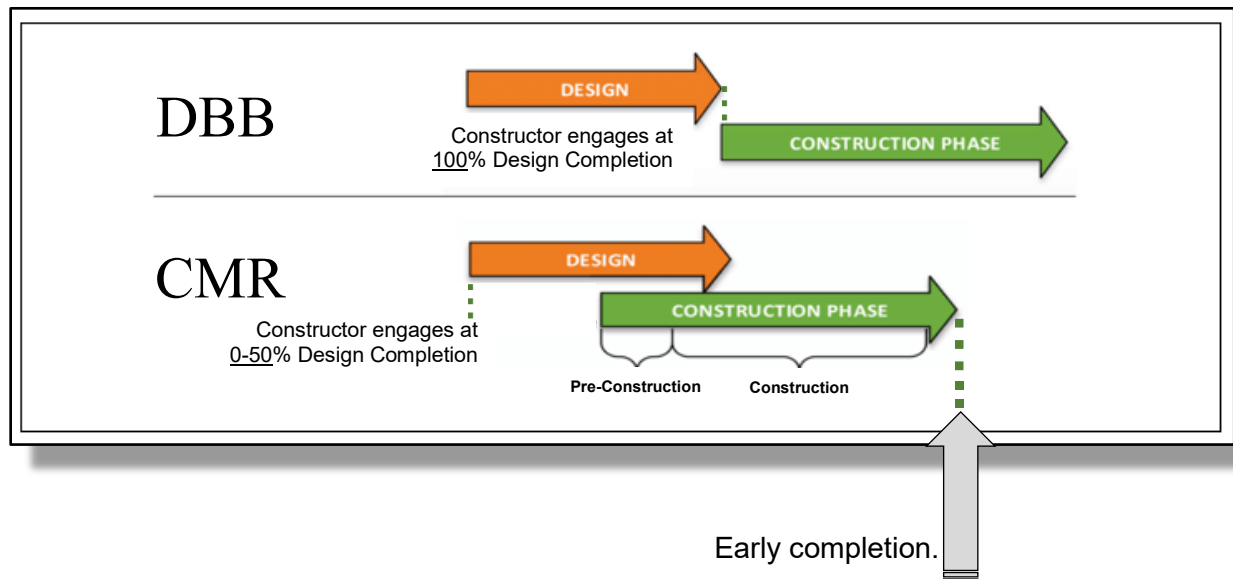
As of June 2022, the Board of Regents had 14 CMR projects with 10 complete and four in-progress over eight years from 2014 to 2022, or 1.8 CMR projects per year.

Risk Assessment: In design and construction, a University must decide how much project risk they are comfortable in assuming. Construction risk can be closely tied to the local construction market, budget and schedule. While allocating risk, the University should assign risks to parties best suited to manage it.

Budget: Before a budget can be determined, the University must evaluate financing, project feasibility, risk assessment, schedule, staff availability and site location. Once the budget is determined, the University requires that the project be completed within an established budget and schedule.

Schedule: The ability to stack the design and construction phases through CMR is an important scheduling consideration (see chart below). Depending on the size and complexity of the project, the ability to provide needed teaching, research, residence hall, utility and athletic facilities within the Regents' predetermined academic calendar years can be challenging. Of course, the gain or loss of revenue based on the occupancy of the facility should also be carefully weighed.

Design: A design itself affects not only the risk assessment, budget and schedule, but also the University's mission, image and desire to fulfill the needs of its students, faculty and staff. Subsequently, the selected Design Professional should be well qualified for the facility type. In addition, the University must ensure that the program needs, budget, schedule and any University design standards are clearly conveyed to the Design Professional. The design documents must be complete, clear and well-coordinated.



Overlapping design and construction yields an earlier completion and the possibility of releasing bid packages before 100% design completion.

3. Construction Manager at Risk Advantages

CMRs save money and time. According to a comprehensive study done by Penn State University¹ in 1998, Construction Manager at Risk (CMR) and Design Build are optimal delivery methods over Design Bid Build (DBB), especially in the areas of project cost and schedule.

The study analyzed 351 buildings from 37 states and six building types. The six building types were light industrial (28%), residence hall or multistory dwelling (8%), classroom or simple office (24%), dry laboratory, library or complex office (18%), power plant or heavy industrial (5%) and hospital or high technology (17%). Study results were:

	CM at Risk vs Design Bid Build
unit cost	1.6% lower
construction speed	5.8% faster
delivery speed	13.3% faster
change orders	7.8% more ²
schedule growth	9.2% less

CMRs provide better quality facilities. Quality was measured in multiple areas and determined by asking facility owners to measure actual versus expected facility performance. CMR significantly outperformed Design Bid Build. Design Bid Build barely met Owner expectations.

CMRs maximize the investment by delivering projects faster and at a lower cost.

CMRs provide greater project certainty. CMRs are contractually bound to deliver the project at a Guaranteed Maximum Price (GMP) and on schedule, leading to greater cost predictability. In fact, the Regents or any Owner receive a financial credit, if the CMR project is delivered under budget.

CMRs yield fewer change orders. “Fast track” flexibility, project efficiency and greater team collaboration (fewer silos) are realized by overlapping the design and construction processes, yielding fewer change orders.

CMRs establish competition required through *Iowa Code §26A*, *Iowa Code §262.34*, well-developed contracts, experienced facilities staff and this document, the Regents’ *Alternative Delivery Method Guidelines*.

CMRs keep the Regents competitive within the design and construction markets as CMRs flourish in public and private sectors throughout the United States.

¹ “Comparison of U.S. Project Delivery Systems,” Mark Konchar & Victor Sanvido of Pennsylvania State University, *Journal of Construction Engineering and Management*, Vol. 124, No. 6 (1998), pp. 435-444.

² This 7.8% figure does not reflect the Board of Regents’ CMR change order average of 2%, while Regent Design Bid Build change orders average 4%, not including UIHC.

4. Design Bid Build



4.1 Design Bid Build Definition

Design Bid Build has been the Regents’ project delivery method of choice in 98 percent of their capital improvement project bids.

While referred to the “Traditional” method, it has only been used in the United States for roughly the last 150 years. For over 4,000 years prior to that, the leading delivery method was the “Master Builder” delivery method, where one firm designed and built the facility, much like the Design Build-Bridging method used by the Regents from 1999 to 2022. For example, the Egyptian pyramids were designed and built using the Master Builder delivery method around 2780 BC.

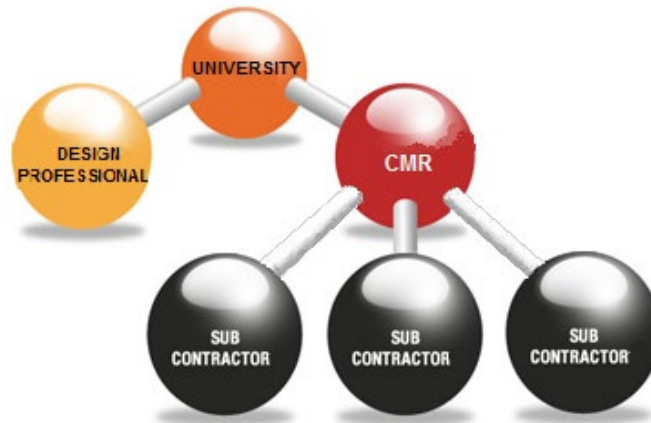
Design Bid Build awards separate contracts to the Design Professional and Contractor, and organizes their work end-to-end, leading to three sequential phases of design, bid and build.

During the Design Professional selection process, a Design Professional is chosen through a competitive, quality-based Request for Proposal (RFP) process. For the firm meeting the RFP requirements better than all other competing firms, an agreement is awarded.

Typically, the Design Professional provides architectural design services, often engineering services and deliverables through various phases. Those phases may include Feasibility Studies, Programming, Pre-Design, Schematic Design, Design Development, Construction Documents, Construction Administration and Record Documents. Always include Record Documents in the Design Professional agreement’s Scope of Services, whenever possible.

Contractors are publically invited to submit competitive, lump-sum bids, occasionally including alternates. The University awards the construction contract to the contractor with the lowest responsive and responsible bid. The bid is then incorporated into the “Form of Agreement Between the Contractor and Owner” and “Performance and Payment Bond,” and submitted to the Board Office for review and approval.

5. Construction Management at Risk



5.1 CMR Definition

The Construction Manager at Risk (CMR) is both an advisor and contractor, who has an at-risk financial obligation to deliver the project within a negotiated Guaranteed Maximum Price (GMP) and schedule.

As advisor, the CMR provides to the University expertise on safety, constructability, cost savings, schedule efficiency, value-engineering, local contractors and trends in construction throughout the entire project.

More specifically, CMR preconstruction services, staffing, site and general condition expenses make up roughly 5% to 10% of the CMR's entire agreement. These are the components of the CMR's Cost Proposal, submitted with their Technical Proposal, which includes an interview, in response to the CMR RFP. During pre-construction services, the CMR works with the Design Professional and the University to negotiate a GMP and project schedule, before the CMR receives bids from the CMR's subcontractors. The GMP is normally negotiated at the end of Design Development. The GMP and project schedule are then implemented into the University's Project Description and Budget submission to the Board or Board Office for their review and approval.

As contractor, the CMR builds the project within the negotiated GMP and project schedule. Additionally, the CMR enters into "Major Work Trade Package" with subcontractors and has the ability to self-perform any of these Major Work Trade Packages.

Throughout the project, any cost savings achieved by the CMR shall be applied to the appropriate contingency line item within the GMP. Near project completion, any unused GMP contingencies shall go to the University.

5.2 CMR Use

Comply with *Iowa Code* §26.4.

5.2.1 Board Approval

After the University has determined the project budget to be over \$5,000,000 and wants to use CMR, the University shall request Board approval to use CMR with three CMR advantages over Design Bid Build (see Section 3). This request can be made as the University requests Board review and approval of Permission to Proceed with Project Planning, or Project Description and Budget. Doing this with Permission to Proceed with Project Planning is preferred by the Board Office.

Project budgets under \$5,000,000 are approved by the Board Office and also requires three advantages.

5.3 CMR Selection Procedures

5.3.1 General Requirements

Comply with *Iowa Code* §26.4, which are captured in these “*Alternative Delivery Method Guidelines*.”

- a. Establish a Selection Committee and set their meetings.
- b. Hire a Design Professional. The University shall select or designate an engineer licensed under chapter 542B, a landscape architect licensed under chapter 544B, or an architect licensed under chapter 544A by utilizing a quality-based selection process. The engineer, landscape architect, or architect selected or designated by the University shall have the responsibility of preparing construction documents for the project and shall review the construction for conformance with design intent. Fee-based selection of the engineer, landscape architect, or architect is prohibited.

The selection of the Design Professional may occur before, after, or concurrently with CMR selection. Likewise, the CMR may assist in the selection of the Design Professional.

- c. Iowa Preference: Preference shall be given in accordance with *Iowa Code* §8A.311 to the selection of firms based either in Iowa or with permanent offices in Iowa. If a firm which is neither Iowa-based nor with a permanent office in Iowa is selected, reasons shall be reported to the Board Office.

Iowa Code §8A.311, section 1a: “If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.”

- d. The University shall notify the Board Office, when the University will evaluate RFQ and RFP proposals. A Board Office representative may elect to be a member of the Selection Committee.

5.3.2 Intent to Enter into a CMR Contract

Advertise the University's Intent to Enter into a CMR contract. A University shall publicly disclose the University's intent to enter into a CMR contract and the Selection Criteria at least 14 days prior to publishing a Request for Statements of Qualifications (RFQ). Public disclosure shall be in a relevant contractor plan room service with statewide circulation, a relevant construction lead generating service with statewide circulation, and on an internet site sponsored by either a University or a statewide association that represents the University.

5.4 Request for Qualifications (RFQ)

The University shall prepare a RFQ. The RFQ shall include general information on the project site, project scope, schedule, Selection Criteria, and the time and place for receipt of the RFQ. RFQ Selection Criteria and general information included in the RFQ may be developed in coordination with the engineer, landscape architect or architect selected or designated by the University.

- a. RFQ Selection Criteria may include the contractor's experience undertaking projects of similar size and scope in either the public or private sector, past performance, safety record, proposed personnel, and proposed methodology. RFQ Selection Criteria shall include experience in both the public and the private sector. RFQ Selection Criteria shall not include specific delivery methods, including CMR. In addition, RFQ Selection Criteria shall not include training, testing, or other certifications that may only be obtained through organized labor affiliations or other limited-membership organizations.
- b. The RFQ shall be subject to *Iowa Code* §73A.28, "Public Improvement Contracts – Prohibited Terms and Exemptions." While *Iowa Code* §73A.28 does not allow a "government entity" to require nor prohibit a bidder from joining a labor organization, please review it at this link: <https://www.legis.iowa.gov/docs/code/73a.28.pdf>.
- c. In addition, a University shall not stipulate RFQ Selection Criteria that would directly or indirectly restrict the CMR selection to any predetermined class of providers based on labor organization affiliation.

5.4.1 RFQ Posting

After the 14 day disclosure of intent to enter into a CMR contract, the RFQ shall be posted not less than 13 and not more than 45 days before the RFQ proposal due date in a relevant contractor plan room service with statewide circulation, in a relevant construction-lead-generating service with statewide circulation, and on an internet site sponsored by either a University or a statewide association that represents the University.

- a. If circumstances beyond the control of the University require postponement and there are no changes to the RFQ, a notice of the revised RFQ due date shall be posted not less

than 4 and not more than 45 days before the revised RFQ due date at the same internet sites. This requirement on revised due dates applies to both the RFQ and RFP.

5.4.2 RFQ Opening

The University shall receive, publicly open and read aloud the names of the contractors submitting RFQ proposals.

- a. Within 45 days after the date of opening, the University shall evaluate each RFQ proposal based upon the established RFQ Selection Criteria.
- b. A minimum of two, but not more than five firms, shall be selected or “shortlisted” to receive an RFP. If at least two qualified firms cannot be identified, the selection process shall cease.
- c. Notify all contractors of the RFQ results.
- d. RFQ scores do not carry forward to the RFP.

5.5 Request for Proposals (RFP)

The University shall issue an RFP to each contractor, who met the RFQ’s Selection Criteria.

- a. The University shall receive, publicly open and read aloud the names of the contractors submitting RFP proposals. Within 45 days after the date of opening the proposals, the University shall evaluate and rank each proposal.
- b. Each contractor’s RFP proposal shall concurrently include two, separately sealed packages:
 - Technical Proposal (which includes the Selection Committee’s interview)
 - Cost Proposal
- c. The Cost Proposal is not opened until after the Selection Committee has reviewed the Technical Proposal, interviewed the contractor and evaluated the Technical Proposal and interview as one Technical Proposal score.
- d. After all Technical Proposal scores are attained from the Selection Committee, the separately sealed Cost Proposals shall be opened, evaluated and combined with the Technical Proposal scores (proposal and interview) to determine the firm with the overall best score. The firm with the best overall score shall be selected as the CMR.

5.5.1 RFP Technical Proposal

- a. Provided by the University, the RFP Technical Proposal shall include:
 1. Submitting procedures, Selection Criteria and their relative weight, and the CMR Contract Award procedures.

2. CMR contract terms and conditions.
 3. Drawings, specifications or other project information.
 4. Proposed project schedule, including construction commencement and completion.
 5. Budget limits on the entire CMR contract.
 6. Bid bond, performance bond, payment bond and insurance requirements.
 7. Alternates, if any.
 8. Like the RFQ, the RFP shall be subject to the requirements of *Iowa Code §73A.28* <https://www.legis.iowa.gov/docs/code/73a.28.pdf>.
 9. Other information the University chooses to supply, such as surveys, soil reports, drawings of existing structures, environmental studies, photographs or references to public records.
- b. The RFP Technical Proposal shall also include a request for an in-depth written response, providing the following minimum information:
1. Company overview.
 2. Experience undertaking projects of similar size and scope in either the public or private sector.
 3. Past performance.
 4. Safety record and project safety plan.
 5. Project personnel, including resumes and project staffing plan.
 6. Methodology and schedule.
 7. Project management approach.
 8. Pre-construction and construction phase services.
 9. Construction phase controls and construction processes.
 10. References from other Universities, Owners, Design Professionals or Contractors relative to the project under consideration.
 11. Bonding capacity, including evidence of such bonding capacity. Failure to present such evidence will deem the firm as unqualified. Financial statements may be requested, if necessary, to confirm the firm's qualifications.

- c. The RFP Technical Proposal's Selection Criteria shall not include:
 - 1. Specific delivery methods, including CMR projects.
 - 2. Training, testing, or other certifications that may only be obtained through organized labor affiliations or other limited-membership organizations.

5.5.2 RFP Technical Proposal Interview

Upon receipt of all RFP proposals, the Selection Committee shall interview all firms to allow them to present their proposed team members, qualifications, project plan and to ask and answer questions.

- a. The Selection Committee shall evaluate each firm in accordance with the established RFP Selection Criteria.

5.5.3 RFP Cost Proposal

The Cost Proposal shall be enclosed in its own separately sealed package and identified with the firm's name and the University's project name. Failure to submit a Cost Proposal on time shall be cause to reject the CMR's entire RFP proposal.

- a. The RFP shall require the CMR's non-GMP costs in the separately sealed Cost Proposal, which includes the:
 - 1. CMR fee percentage.
 - 2. CMR pre-construction services expenses.
 - 3. CMR staff expenses.
 - 4. CMR site expenses.
 - 5. CMR general conditions' expenses.
 - 6. CMR Cost Proposal's Total Expenses.
- b. The Cost Proposal shall be accompanied by bid security and other required submittals.
- c. The Cost Proposal is not opened until after the Selection Committee has reviewed the Technical Proposal, interviewed the contractor and evaluated the Technical Proposal and interview as one Technical Proposal score.

5.5.4 RFP Cost Proposal Evaluation

Score Cost Proposals using the following formula, which yields maximum Cost Proposal Points to the “Lowest Cost Proposal.”

$$\begin{array}{l} \text{Maximum} \\ \text{Available} \\ \text{Cost} \\ \text{Proposal} \\ \text{Points} \end{array} \times 1.0 - \left[\frac{\text{Cost Proposal} - \text{Lowest Cost Proposal}}{\text{Lowest Cost Proposal}} \right] = \begin{array}{l} \text{Total} \\ \text{Cost} \\ \text{Proposal} \\ \text{Points} \end{array}$$

Technical Proposals and Interviews shall account for a minimum of 70 percent out of 100 Total Points Available. Cost Proposals shall account for a maximum of 30 percent out of 100 Total Points Available.

5.6 CMR Selection

- a. Selection Committee Summary Report: The Selection Committee’s evaluation of all CMR Technical Proposals and Cost Proposals shall be combined into one Summary Report that compares CMR scoring. The Selection Committee’s Summary Report shall clearly show the CMR with the best overall score, and justification for designating that firm as the selected CMR.
- b. CMR Contract Negotiation: The University shall first attempt to negotiate a contract with the selected CMR. If the University is unable to negotiate a satisfactory contract with the selected CMR, the University shall, formally and in writing, end negotiations with that CMR, and negotiate with the next CMR in the order of scoring rank, until a contract is negotiated or negotiations with all ranked CMRs end.
- c. University Approval: Following completion of the Selection Committee’s Summary Report, the University shall forward the Summary Report to the University president or the president’s designee for approval of the selected CMR firm’s Contract Award.
- d. CMR Results Made Public: The University shall make available to the public the final scoring and ranking evaluation of the CMR’s RFP proposals.
- e. CMR Contract Award: The University shall forward Contract Award documentation and the Selection Committee’s Summary Report to the Board Office for formal Contract Award approval.
- f. CMR Contract and Payment & Performance Bond Approval: Following the Board Office’s Contract Award, the University shall forward the CMR contract and payment & performance bond to the Board Office for review and approval.

5.7 CMR's Subcontractors

If the estimated total cost of Trade Contract Work and Materials Packages is in excess of the adjusted competitive bid threshold (\$100,000) established in *Iowa Code* §314.1B, the CMR shall advertise for competitive bids, receive bids, prepare an analysis for all bids, and award contracts to qualified firms on Trade Contract Work and Materials Packages in accordance with all of the following:

- a. The CMR shall prepare a Request for Statements of Qualifications (CMR's RFQ to the CMR's subcontractors). The CMR's RFQ shall be posted not less than 13 and not more than 45 days before the CMR RFQ due date in a relevant contractor plan room service with statewide circulation, in a relevant construction-lead-generating service with statewide circulation, and on an internet site sponsored by either a University or a statewide association that represents the University.
- b. The CMR shall utilize objective Prequalification Criteria in the CMR's RFQ. All firms who meet the Prequalification Criteria as a qualified firm, shall be allowed to submit a bid to the CMR for the relevant Trade Contract Work and Materials Packages described in the CMR's RFQ. Upon determining which firms meet the Prequalification Criteria, the CMR shall notify all firms who responded to the CMR's RFQ, whether they successfully meet the Prequalification Criteria or not. The notification shall include a list of all firms who were deemed to have successfully met the Prequalification Criteria.
- c. Notification shall be given no less than 15 days prior to the subcontractor bid due date. Subcontractors who failed to meet the prequalification standards shall also be provided with information regarding which Prequalification Criteria were not met.
- d. In addition, a subcontractor who is prequalified with the State of Iowa Department of Transportation pursuant to *Iowa Code* §314.1 shall be considered to meet the Prequalification Criteria as a qualified firm, and shall be allowed to submit a bid on Board of Regents' parking lots, streets, site development or bridge structure components.
- e. Prequalification Criteria shall be limited to a firm's experience as a contractor, capacity of key personnel, technical competence, capability to perform, the past performance of the firm and the firm's employees to include the firm's safety record and compliance with state and federal law, and availability to and familiarity with the location of the project subject to bid. Prequalification Criteria shall be reasonably and materially related to the relevant Trade Contract Work and Materials Package. The Prequalification Criteria shall not include training, testing, or other certifications that may only be obtained through organized labor affiliated organizations or other limited-membership organizations.

- f. The CMR and the University shall participate in the subcontractor bid review and evaluation process. The CMR and the University shall open, announce the name of the subcontractor submitting a bid, and file all bids at the time and place specified in the notice to bidders. After the bids have been opened, reviewed and tabulated, subcontractor contracts shall be awarded by the CMR to the lowest responsive and responsible bidder. All CMR subcontractor awards and bids shall be made available to the public.
- g. If a selected Trade Contract Work and Materials Package subcontractor materially defaults in the performance of its work or fails to execute their subcontract, the CMR may, without advertising, fulfill the contract requirements or select a replacement trade contractor to fulfill the contract requirements.

5.7.1 CMR's Self-Performance of Trade Contract Work and Materials Packages

The CMR may self-perform work for a Trade Contract Work and Materials Package that is below the adjusted competitive bid threshold (\$100,000) established in *Iowa Code* §314.1B. If a trade package is in excess of the adjusted competitive bid threshold (\$100,000) established in *Iowa Code* §314.1B, the CMR shall notify the University in writing, that it intends to submit a bid proposal for a Trade Contract Work and Materials Package.

- a. When the CMR submits a bid on a Trade Contract Work and Materials Package, the University shall receive the bids, participate in, and provide oversight of all bid analyses relevant to the award or rejection of bids on any Trade Contract Work and Materials Packages.
- b. Where the CMR is not the apparent low bidder, the University shall be responsible for determining whether a recommendation of award to the CMR is in the best interests of the project.
- c. A CMR shall not be required to comply with bidding requirements for general conditions as provided in the contract with the University. If the CMR self-performs the construction work, it shall adhere to any agreement it may have with one or more labor organizations. However, the CMR shall not be obligated to adhere to any terms and conditions of any labor agreement with one or more labor organizations for those Trade Contract Work and Materials Packages that are not self-performed by the CMR for the public improvement, and such terms shall be deemed void and unenforceable.