

# House Study Bill 674 - Introduced

HOUSE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
LOCAL GOVERNMENT BILL BY  
CHAIRPERSON BLOOMINGDALE)

## A BILL FOR

1 An Act relating to a construction manager-at-risk commercial  
2 construction alternative delivery method and prohibiting  
3 certain other alternative delivery methods in the public  
4 sector.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 DIVISION I

2 PUBLIC CONSTRUCTION BIDDING REQUIREMENTS

3 Section 1. Section 26.2, subsection 3, paragraph b,  
4 subparagraph (5), Code 2020, is amended to read as follows:

5 (5) Construction or repair or maintenance work performed  
6 for a city utility under chapter 388 when such work is  
7 performed by its employees or when such work relates to  
8 existing utility infrastructure or to establishing connections  
9 to existing utility systems.

10 (6) Construction or repair or maintenance work performed  
11 for a rural water district under chapter 357A by its employees.

12 Sec. 2. Section 26.4, Code 2020, is amended to read as  
13 follows:

14 ~~26.4 Exemptions from competitive bids and quotations~~  
15 Architectural and engineering services — exemptions —  
16 prohibitions.

17 1. Architectural, landscape architectural, or engineering  
18 design services procured for a public improvement are not  
19 subject to sections 26.3 and 26.14.

20 2. Fee-based selection of an architect, landscape  
21 architect, or engineer for a public improvement shall be  
22 prohibited.

23 Sec. 3. Section 262.34, Code 2020, is amended by adding the  
24 following new subsection:

25 NEW SUBSECTION. 6. Notwithstanding any provision of this  
26 chapter to the contrary, the state board of regents shall  
27 not be authorized to enter into a design-build contract to  
28 construct, repair, or improve buildings or grounds. For  
29 purposes of this subsection, "*design-build contract*" means  
30 a single contract providing for both design services and  
31 construction services that may include maintenance, operations,  
32 preconstruction, and other related services.

33 DIVISION II

34 GUARANTEED MAXIMUM PRICE CONTRACTS

35 Sec. 4. NEW SECTION. 26A.1 Definitions.

1 As used in this chapter, unless the context clearly  
2 indicates otherwise:

3 1. "*Construction manager-at-risk*" means a sole  
4 proprietorship, partnership, corporation, or other legal entity  
5 that assumes the risk for the construction, rehabilitation,  
6 alteration, or repair of a project and provides consultant  
7 services to the government entity in the development and design  
8 phases, working collaboratively with the design professionals  
9 involved.

10 2. "*Governmental entity*" means the state, political  
11 subdivisions of the state, public school corporations, and all  
12 officers, boards, or commissions empowered by law to enter  
13 into contracts for the construction of public improvements,  
14 including the state board of regents.

15 3. "*Guaranteed maximum price contract*" means the agreed  
16 to fixed or guaranteed maximum price pursuant to a contract  
17 entered into by the construction manager-at-risk and the  
18 governmental entity.

19 4. "*Public improvement*" means as defined in section 26.2.

20 5. "*Repair or maintenance work*" means as defined in section  
21 26.2.

22 Sec. 5. NEW SECTION. **26A.2 Authorization.**

23 Notwithstanding any other law to the contrary, a  
24 governmental entity shall be authorized to enter into a  
25 guaranteed maximum price contract for the construction of a  
26 public improvement pursuant to this chapter.

27 Sec. 6. NEW SECTION. **26A.3 Guaranteed maximum price  
28 contract — process.**

29 1. A governmental entity shall publicly disclose the  
30 governmental entity's intent to enter into a guaranteed  
31 maximum price contract and the governmental entity's selection  
32 criteria at least fourteen days prior to publishing a request  
33 for statements of qualifications. Public disclosure shall  
34 be in a relevant contractor plan room service with statewide  
35 circulation, a relevant construction lead generating service

1 with statewide circulation, and on an internet site sponsored  
2 by either a governmental entity or a statewide association that  
3 represents the governmental entity.

4     2. The governmental entity shall select or designate an  
5 engineer licensed under chapter 542B, a landscape architect  
6 licensed under chapter 544B, or an architect licensed  
7 under chapter 544A by utilizing a quality-based selection  
8 process. Fee-based selection of the engineer, landscape  
9 architect, or architect shall be prohibited. The engineer,  
10 landscape architect, or architect selected or designated by  
11 the government entity under this subsection shall have the  
12 responsibility of preparing construction documents for the  
13 project and shall review the construction for conformance with  
14 design intent.

15     3. *a.* (1) The governmental entity shall prepare a request  
16 for statements of qualifications. The request shall include  
17 general information on the project site, project scope,  
18 schedule, selection criteria, and the time and place for  
19 receipt of statements of qualifications. Selection criteria  
20 and general information included in the request for statements  
21 of qualifications may be developed in coordination with  
22 the engineer, landscape architect, or architect selected or  
23 designated by the governmental entity as provided under this  
24 section.

25     (2) Selection criteria may include the contractor's  
26 experience undertaking projects of similar size and scope  
27 in either the public or private sector, past performance,  
28 safety record, proposed personnel, and proposed methodology.  
29 Selection criteria shall include experience in both the public  
30 and the private sector. Selection criteria shall not include  
31 specific delivery methods, including guaranteed maximum price  
32 projects. In addition, selection criteria shall not include  
33 training, testing, or other certifications that may only be  
34 obtained through organized labor affiliated organizations or  
35 other limited-membership organizations.

1       (3) A request for statements of qualifications under this  
2 subsection shall be subject to the requirements of section  
3 73A.28. In addition, a governmental entity shall not by  
4 ordinance, rule, or any other action relating to the request  
5 for qualifications stipulate criteria that would directly  
6 or indirectly restrict the selection of a construction  
7 manager-at-risk to any predetermined class of providers based  
8 on labor organization affiliation or any other criteria other  
9 than that allowed pursuant to this paragraph.

10       *b.* The request for statements of qualifications shall be  
11 posted not less than thirteen and not more than forty-five days  
12 before the date for response in a relevant contractor plan room  
13 service with statewide circulation, in a relevant construction  
14 lead generating service with statewide circulation, and on an  
15 internet site sponsored by either a governmental entity or a  
16 statewide association that represents the governmental entity.  
17 If circumstances beyond the control of the governmental  
18 entity require postponement and there are no changes to the  
19 project's contract documents, a notice of the revised date  
20 shall be posted not less than four and not more than forty-five  
21 days before the revised date for answering the request for  
22 proposals and statements of qualifications in a relevant  
23 contractor plan room service with statewide circulation, in a  
24 relevant construction lead generating service with statewide  
25 circulation, and on an internet site sponsored by either a  
26 government entity or a statewide association that represents  
27 the governmental entity.

28       *c.* The governmental entity shall receive, publicly open, and  
29 read aloud the names of the contractors submitting statements  
30 of qualifications. Within forty-five days after the date of  
31 opening the statements of qualifications submissions, the  
32 governmental entity shall evaluate each proposal or statement  
33 of qualifications submission in relation to the criteria set  
34 forth in the request.

35       4. *a.* After considering the proposals based upon

1 qualifications, the governmental entity shall issue a request  
2 for proposals to each contractor who meets the qualifications  
3 which shall include selection and evaluation criteria. Each  
4 contractor issued a request for proposals shall be permitted  
5 to submit a proposal and each proposal submitted shall include  
6 the construction manager-at-risk's proposed fees. The request  
7 for proposals shall be subject to the requirements of section  
8 73A.28.

9     *b.* The governmental entity shall receive, publicly open, and  
10 read aloud the names of the contractors submitting proposals.  
11 Within forty-five days after the date of opening the proposals,  
12 the governmental entity shall evaluate and rank each proposal  
13 in relation to the criteria set forth in the applicable  
14 request.

15     *c.* The governmental entity or its representative shall  
16 select the construction manager-at-risk that submits the  
17 proposal that offers the best value for the governmental  
18 entity based on the published selection criteria and on  
19 its ranking evaluation. The governmental entity shall  
20 first attempt to negotiate a contract with the selected  
21 construction manager-at-risk. If the governmental entity  
22 is unable to negotiate a satisfactory contract with the  
23 selected construction manager-at-risk, the governmental entity  
24 shall, formally and in writing, end negotiations with that  
25 construction manager-at-risk and proceed to negotiate with the  
26 next construction manager-at-risk in the order of the selection  
27 ranking until a contract is reached or negotiations with all  
28 ranked construction managers-at-risk end.

29     *d.* The governmental entity shall make available to the  
30 public the final scoring and ranking evaluation of the request  
31 for proposals received.

32     5. *a.* If the estimated total cost of trade contract work  
33 and materials packages is in excess of the adjusted competitive  
34 bid threshold established in section 314.1B, the construction  
35 manager-at-risk shall advertise for competitive bids, receive

1 bids, prepare bid analyses, and award contracts to qualified  
2 firms on trade contract work and materials packages in  
3 accordance with all of the following:

4     (1) Prior to advertising for competitive bids and awarding  
5 contracts on trade contract work and materials packages, the  
6 construction manager-at-risk shall provide public notice of the  
7 opportunity to submit bids on trade contract work and materials  
8 packages in a relevant contractor plan room service with  
9 statewide circulation, a relevant construction lead generating  
10 service with statewide circulation, and on an internet site  
11 sponsored by either a governmental entity or a statewide  
12 association that represents the governmental entity.

13     (2) (a) The construction manager-at-risk shall utilize  
14 objective prequalification criteria to develop a list of  
15 qualified firms who may bid and be awarded a contract on a  
16 particular trade contract work and materials package. All  
17 firms who meet the objective prequalification criteria as  
18 a qualified firm shall be allowed to submit a bid for the  
19 relevant trade contract work and materials package. In  
20 addition, a firm that is prequalified with the state department  
21 of transportation pursuant to section 314.1 shall be considered  
22 to meet the objective prequalification criteria as a qualified  
23 firm and shall be allowed to submit a bid for purposes of work  
24 related to parking lots, streets, site development, or bridge  
25 structure components.

26     (b) Prequalification criteria shall be limited to a  
27 firm's experience as a contractor, capacity of key personnel,  
28 technical competence, capability to perform, the past  
29 performance of the firm and the firm's employees to include  
30 the firm's safety record and compliance with state and federal  
31 law, and availability to and familiarity with the location of  
32 the project subject to bid. Prequalification criteria shall  
33 be reasonably and materially related to the relevant trade  
34 contract work and materials package. The prequalification  
35 criteria shall not include training, testing, or other

1 certifications that may only be obtained through organized  
2 labor affiliated organizations or other limited-membership  
3 organizations. Prequalification criteria shall be subject to  
4 the requirements of section 73A.28.

5 (3) The governmental entity and the construction  
6 manager-at-risk shall participate in the bid review and  
7 evaluation process. After the bids have been tabulated,  
8 the contracts shall be awarded to the lowest responsive,  
9 responsible bidder. All awards shall be made available to the  
10 public.

11 (4) Notwithstanding any provision of this paragraph to  
12 the contrary, a construction manager-at-risk shall not be  
13 required to bid work that will be self-performed pursuant to  
14 the contract with the governmental entity. If the construction  
15 manager-at-risk intends to self-perform, the construction  
16 manager-at-risk must notify the governmental entity in writing  
17 of the construction manager-at-risk's intent to do so and  
18 identify the trade contract work and material packages that  
19 will be self-performed. A construction manager-at-risk shall  
20 not be required to comply with bidding requirements for general  
21 conditions as provided in the contract with the governmental  
22 entity.

23 b. If a selected trade contractor materially defaults in  
24 the performance of its work or fails to execute a contract,  
25 the construction manager-at-risk may, without advertising,  
26 fulfill the contract requirements or select a replacement trade  
27 contractor to fulfill the contract requirements.

28 Sec. 7. NEW SECTION. 26A.4 Prohibited contracts.

29 1. Notwithstanding any other provision of law to the  
30 contrary, a governmental entity shall not be authorized  
31 to enter into a design-build contract for the construction  
32 of a public improvement. For purposes of this subsection,  
33 "*design-build contract*" means a single contract providing for  
34 both design services and construction services that may include  
35 maintenance, operations, preconstruction, and other related



1 services.

2 2. A governmental entity shall not be authorized to  
3 enter into a guaranteed maximum price contract for public  
4 improvements relating to highway and bridge construction.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with  
7 the explanation's substance by the members of the general assembly.

8 This bill concerns public construction and improvement  
9 contracts.

10 DIVISION I — PUBLIC CONSTRUCTION BIDDING REQUIREMENTS.

11 Code section 26.2 is amended to provide that the term  
12 "public improvement" excludes construction work and repair  
13 or maintenance work performed for a city utility under  
14 Code chapter 388 when such work relates to existing utility  
15 infrastructure or to establishing connections to existing  
16 utility systems.

17 Code section 26.4, relating to architectural and engineering  
18 services, is amended to prohibit fee-based selection of an  
19 architect, landscape architect, or engineer for a public  
20 improvement.

21 Code section 262.34 is amended to prohibit the state board  
22 of regents from entering into a design-build contract to  
23 construct, repair, or improve buildings or grounds.

24 DIVISION II — GUARANTEED MAXIMUM PRICE CONTRACTS. This  
25 division allows a governmental entity to use a guaranteed  
26 maximum price contract for purposes of public improvement  
27 contracts.

28 New Code section 26A.1 defines, among other terms,  
29 "construction manager-at-risk", "governmental entity",  
30 "guaranteed maximum price contract" and "public improvement".  
31 "Guaranteed maximum price contract" is defined to mean the  
32 agreed to fixed or guaranteed maximum price pursuant to a  
33 contract entered into by the construction manager-at-risk and  
34 the governmental entity. "Construction manager-at-risk" means  
35 a legal entity that assumes the risk for the construction,

1 rehabilitation, alteration, or repair of a project and  
2 provides consultant services to the governmental entity in the  
3 development and design phases, working collaboratively with  
4 the design professionals involved. "Governmental entity" is  
5 defined to mean the state, political subdivisions of the state,  
6 and public school corporations, and is specifically defined to  
7 include the state board of regents. "Public improvement" is  
8 defined to mean the same as for purposes of Code chapter 26  
9 governing public construction bidding.

10 New Code section 26A.2 authorizes a governmental entity to  
11 enter into a guaranteed maximum price contract for a public  
12 improvement, notwithstanding any provision of law to the  
13 contrary.

14 New Code section 26A.3 establishes the process for entering  
15 into a guaranteed maximum price contract. The new Code section  
16 provides procedures governing public disclosure of an intent to  
17 enter into a guaranteed maximum price contract, selection of  
18 an engineer, landscape architect, or architect, a request for  
19 qualifications process, a request for proposals and selection  
20 process, and selection of trade contractors and material  
21 packages.

22 New Code section 26A.4 prohibits a governmental entity from  
23 entering into a design-build contract for the construction of a  
24 public improvement and entering into a guaranteed maximum price  
25 contract for public improvements relating to highway and bridge  
26 construction.