

262.34 Improvements — advertisement for bids — disclosures — payments.

1. When the estimated cost of construction, repairs, or improvement of buildings or grounds under charge of the state board of regents, including construction, renovation, or repairs by a private party of a property to be lease-purchased by the board, exceeds one hundred thousand dollars, the board shall advertise for bids for the contemplated improvement or construction and shall let the work to the lowest responsible bidder. However, if in the judgment of the board bids received are not acceptable, the board may reject all bids and proceed with the construction, repair, or improvement by a method as the board may determine. All plans and specifications for repairs or construction, together with bids on the plans or specifications, shall be filed by the board and be open for public inspection. All bids submitted under [this section](#) shall be accompanied by a deposit of money, a certified check, or a credit union certified share draft in an amount as the board may prescribe.

2. Notwithstanding [subsection 1](#), when a delay in undertaking a repair, restoration, or reconstruction of a public improvement might cause serious loss or injury at an institution under the control of the state board of regents, the executive director of the board, or the board, shall make a finding of the need to institute emergency procedures under [this subsection](#). The board by separate action shall approve the emergency procedures to be employed.

3. A bidder awarded a contract shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

4. Payments made by the board for the construction of public improvements shall be made in accordance with the provisions of [chapter 573](#) except that:

a. Payments may be made without retention until ninety-five percent of the contract amount has been paid. The remaining five percent of the contract amount shall be paid as provided in [section 573.14](#), except that:

(1) At any time after all or any part of the work is substantially completed in accordance with paragraph “c”, the contractor may request the release of all or part of the retainage owed. Such request shall be accompanied by a waiver of claim rights under the provisions of [chapter 573](#) from any person, firm, or corporation who has, under contract with the principal contractor or with subcontractors, performed labor, or furnished materials, service, or transportation in the construction of that portion of the work for which release of the retainage is requested.

(2) Upon receipt of the request, the board shall release all or part of the unpaid funds. Retainage that is approved as payable shall be paid at the time of the next monthly payment or within thirty days, whichever is sooner. If partial retainage is released pursuant to a contractor’s request, no retainage shall be subsequently held based on that portion of the work. If within thirty days of when payment becomes due the board does not release the retainage due, interest shall accrue on the retainage amount due as provided in [section 573.14](#) until that amount is paid.

(3) If at the time of the request for the retainage there are remaining or incomplete minor items, an amount equal to two hundred percent of the value of each remaining or incomplete item, as determined by the board’s authorized contract representative, may be withheld until such item or items are completed.

(4) An itemization of the remaining or incomplete items, or the reason that the request for release of the retainage was denied, shall be provided to the contractor in writing within thirty calendar days of the receipt of the request for release of retainage.

b. For purposes of [this section](#), “*authorized contract representative*” means the architect or engineer who is in charge of the project and chosen by the board to represent its interests, or if there is no architect or engineer, then such other contract representative or officer as designated in the contract documents as the party representing the board’s interest regarding administration and oversight of the project.

c. For purposes of [this section](#), “*substantially completed*” means the first date on which any of the following occurs:

(1) Completion of the project or when the work has been substantially completed in general accordance with the terms and provisions of the contract.

(2) The work or the portion designated is sufficiently complete in accordance with the requirements of the contract so the board can occupy or utilize the work for its intended purpose.

(3) The project is certified as having been substantially completed by either of the following:

(a) The architect or engineer authorized to make such certification.

(b) The contracting authority representing the board.

5. The contractor shall release retained funds to the subcontractor or subcontractors in the same manner as retained funds are released to the contractor by the board. Each subcontractor shall pass through to each lower tier subcontractors all retained fund payments from the contractor.

6. Notwithstanding any provision of [this chapter](#) to the contrary, the state board of regents shall not be authorized to enter into a design-build contract to construct, repair, or improve buildings or grounds. For purposes of [this subsection](#), “*design-build contract*” means a single contract providing for both design services and construction services that may include maintenance, operations, preconstruction, and other related services.

[C24, 27, 31, 35, 39, §3945; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.34; 81 Acts, ch 28, §6]

84 Acts, ch 1055, §5; 90 Acts, ch 1161, §2; 2005 Acts, ch 179, §153; 2006 Acts, ch 1017, §24, 42, 43; 2009 Acts, ch 100, §7, 21; 2018 Acts, ch 1075, §6, 12, 13; 2018 Acts, ch 1172, §71, 72; 2019 Acts, ch 24, §35; 2022 Acts, ch 1122, §2 – 4

Referred to in §262.56, 262A.4, 263A.2, 314.1

Subsection 6 does not apply to projects using design-build if an architect has entered into a contract to work with the state board of regents on a project using design-build prior to June 14, 2022; 2022 Acts, ch 1122, §4