

H-8307

1 Amend House File 2572 as follows:

2 1. By striking everything after the enacting clause and  
3 inserting:

4 <DIVISION I

5 PUBLIC CONSTRUCTION BIDDING REQUIREMENTS

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

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

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

15 Sec. 2. Section 26.4, Code 2020, is amended to read as  
16 follows:

17 ~~26.4 Exemptions from competitive bids and quotations~~  
18 Architectural and engineering services — exemptions —  
19 prohibitions.

20 1. Architectural, landscape architectural, or engineering  
21 design services procured for a public improvement are not  
22 subject to sections 26.3 and 26.14.

23 2. Fee-based selection of an architect, landscape  
24 architect, or engineer for a public improvement shall be  
25 prohibited.

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

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

1 DIVISION II

2 GUARANTEED MAXIMUM PRICE CONTRACTS

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

4 As used in this chapter, unless the context clearly  
5 indicates otherwise:

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

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

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

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

23 5. "*Repair or maintenance work*" means as defined in section  
24 26.2.

25 Sec. 5. NEW SECTION. 26A.2 Authorization.

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

30 Sec. 6. NEW SECTION. 26A.3 Guaranteed maximum price  
31 contract — process.

32 1. A governmental entity shall publicly disclose the  
33 governmental entity's intent to enter into a guaranteed  
34 maximum price contract and the governmental entity's selection  
35 criteria at least fourteen days prior to publishing a request

1 for statements of qualifications. Public disclosure shall  
2 be in a relevant contractor plan room service with statewide  
3 circulation, a relevant construction lead generating service  
4 with statewide circulation, and on an internet site sponsored  
5 by either a governmental entity or a statewide association that  
6 represents the governmental entity.

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

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

28 (2) Selection criteria may include the contractor's  
29 experience undertaking projects of similar size and scope  
30 in either the public or private sector, past performance,  
31 safety record, proposed personnel, and proposed methodology.  
32 Selection criteria shall include experience in both the public  
33 and the private sector. Selection criteria shall not include  
34 specific delivery methods, including guaranteed maximum price  
35 projects. In addition, selection criteria shall not include

1 training, testing, or other certifications that may only be  
2 obtained through organized labor affiliated organizations or  
3 other limited-membership organizations.

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

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

31 c. The governmental entity shall receive, publicly open, and  
32 read aloud the names of the contractors submitting statements  
33 of qualifications. Within forty-five days after the date of  
34 opening the statements of qualifications submissions, the  
35 governmental entity shall evaluate each proposal or statement

1 of qualifications submission in relation to the criteria set  
2 forth in the request.

3 4. a. After considering the proposals based upon  
4 qualifications, the governmental entity shall issue a request  
5 for proposals to each contractor who meets the qualifications  
6 which shall include selection and evaluation criteria. Each  
7 contractor issued a request for proposals shall be permitted  
8 to submit a proposal and each proposal submitted shall include  
9 the construction manager-at-risk's proposed fees. The request  
10 for proposals shall be subject to the requirements of section  
11 73A.28.

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

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

32 d. The governmental entity shall make available to the  
33 public the final scoring and ranking evaluation of the request  
34 for proposals received.

35 5. a. If the estimated total cost of trade contract work

1 and materials packages is in excess of the adjusted competitive  
2 bid threshold established in section 314.1B, the construction  
3 manager-at-risk shall advertise for competitive bids, receive  
4 bids, prepare bid analyses, and award contracts to qualified  
5 firms on trade contract work and materials packages in  
6 accordance with all of the following:

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

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

29 (b) Prequalification criteria shall be limited to a  
30 firm's experience as a contractor, capacity of key personnel,  
31 technical competence, capability to perform, the past  
32 performance of the firm and the firm's employees to include  
33 the firm's safety record and compliance with state and federal  
34 law, and availability to and familiarity with the location of  
35 the project subject to bid. Prequalification criteria shall

1 be reasonably and materially related to the relevant trade  
2 contract work and materials package. The prequalification  
3 criteria shall not include training, testing, or other  
4 certifications that may only be obtained through organized  
5 labor affiliated organizations or other limited-membership  
6 organizations. Prequalification criteria shall be subject to  
7 the requirements of section 73A.28.

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

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

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

31 **Sec. 7. NEW SECTION. 26A.4 Prohibited contracts.**

32 1. Notwithstanding any other provision of law to the  
33 contrary, a governmental entity shall not be authorized  
34 to enter into a design-build contract for the construction  
35 of a public improvement. For purposes of this subsection,

1 *“design-build contract”* means a single contract providing for  
2 both design services and construction services that may include  
3 maintenance, operations, preconstruction, and other related  
4 services.

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

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