

House File 2572

H-8311

1 Amend the amendment, H-8307, to House File 2572 as follows:

2 1. By striking page 1, line 1, through page 8, line 7, and
3 inserting:

4 <___. By striking everything after the enacting clause and
5 inserting:

6 <DIVISION I

7 PUBLIC CONSTRUCTION BIDDING REQUIREMENTS

8 Sec. ___. Section 26.2, subsection 3, paragraph b,
9 subparagraph (5), Code 2020, is amended to read as follows:

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

15 (6) Construction or repair or maintenance work performed
16 for a rural water district under [chapter 357A](#) by its employees.

17 Sec. ___. Section 26.4, Code 2020, is amended to read as
18 follows:

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

22 1. Architectural, landscape architectural, or engineering
23 design services procured for a public improvement are not
24 subject to [sections 26.3](#) and [26.14](#).

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

28 DIVISION II

29 GUARANTEED MAXIMUM PRICE CONTRACTS

30 Sec. ___. NEW SECTION. 26A.1 Definitions.

31 As used in this chapter, unless the context clearly
32 indicates otherwise:

33 1. "*Construction manager-at-risk*" means a sole
34 proprietorship, partnership, corporation, or other legal entity
35 that assumes the risk for the construction, rehabilitation,

1 alteration, or repair of a project and provides consultant
2 services to the government entity in the development and design
3 phases, working collaboratively with the design professionals
4 involved.

5 2. "*Governmental entity*" means the state, political
6 subdivisions of the state, public school corporations, and all
7 officers, boards, or commissions empowered by law to enter
8 into contracts for the construction of public improvements,
9 including the state board of regents.

10 3. "*Guaranteed maximum price contract*" means the agreed
11 to fixed or guaranteed maximum price pursuant to a contract
12 entered into by the construction manager-at-risk and the
13 governmental entity.

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

15 5. "*Repair or maintenance work*" means as defined in section
16 26.2.

17 Sec. _____. NEW SECTION. **26A.2 Authorization.**

18 Notwithstanding any other law to the contrary, a
19 governmental entity shall be authorized to enter into a
20 guaranteed maximum price contract for the construction of a
21 public improvement pursuant to this chapter.

22 Sec. _____. NEW SECTION. **26A.3 Guaranteed maximum price
23 contract — process.**

24 1. A governmental entity shall publicly disclose the
25 governmental entity's intent to enter into a guaranteed
26 maximum price contract and the governmental entity's selection
27 criteria at least fourteen days prior to publishing a request
28 for statements of qualifications. Public disclosure shall
29 be in a relevant contractor plan room service with statewide
30 circulation, a relevant construction lead generating service
31 with statewide circulation, and on an internet site sponsored
32 by either a governmental entity or a statewide association that
33 represents the governmental entity.

34 2. The governmental entity shall select or designate an
35 engineer licensed under chapter 542B, a landscape architect

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

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

20 (2) Selection criteria may include the contractor's
21 experience undertaking projects of similar size and scope
22 in either the public or private sector, past performance,
23 safety record, proposed personnel, and proposed methodology.
24 Selection criteria shall include experience in both the public
25 and the private sector. Selection criteria shall not include
26 specific delivery methods, including guaranteed maximum price
27 projects.

28 (3) A request for statements of qualifications under this
29 subsection shall be subject to the requirements of section
30 73A.28.

31 *b.* The request for statements of qualifications shall be
32 posted not less than thirteen and not more than forty-five days
33 before the date for response in a relevant contractor plan room
34 service with statewide circulation, in a relevant construction
35 lead generating service with statewide circulation, and on an

1 internet site sponsored by either a governmental entity or a
2 statewide association that represents the governmental entity.
3 If circumstances beyond the control of the governmental
4 entity require postponement and there are no changes to the
5 project's contract documents, a notice of the revised date
6 shall be posted not less than four and not more than forty-five
7 days before the revised date for answering the request for
8 proposals and statements of qualifications in a relevant
9 contractor plan room service with statewide circulation, in a
10 relevant construction lead generating service with statewide
11 circulation, and on an internet site sponsored by either a
12 government entity or a statewide association that represents
13 the governmental entity.

14 *c.* The governmental entity shall receive, publicly open, and
15 read aloud the names of the contractors submitting statements
16 of qualifications. Within forty-five days after the date of
17 opening the statements of qualifications submissions, the
18 governmental entity shall evaluate each proposal or statement
19 of qualifications submission in relation to the criteria set
20 forth in the request.

21 4. *a.* After considering the proposals based upon
22 qualifications, the governmental entity shall issue a request
23 for proposals to each contractor who meets the qualifications
24 which shall include selection and evaluation criteria. Each
25 contractor issued a request for proposals shall be permitted
26 to submit a proposal and each proposal submitted shall include
27 the construction manager-at-risk's proposed fees. The request
28 for proposals shall be subject to the requirements of section
29 73A.28.

30 *b.* The governmental entity shall receive, publicly open, and
31 read aloud the names of the contractors submitting proposals.
32 Within forty-five days after the date of opening the proposals,
33 the governmental entity shall evaluate and rank each proposal
34 in relation to the criteria set forth in the applicable
35 request.

1 *c.* The governmental entity or its representative shall
2 select the construction manager-at-risk that submits the
3 proposal that offers the best value for the governmental
4 entity based on the published selection criteria and on
5 its ranking evaluation. The governmental entity shall
6 first attempt to negotiate a contract with the selected
7 construction manager-at-risk. If the governmental entity
8 is unable to negotiate a satisfactory contract with the
9 selected construction manager-at-risk, the governmental entity
10 shall, formally and in writing, end negotiations with that
11 construction manager-at-risk and proceed to negotiate with the
12 next construction manager-at-risk in the order of the selection
13 ranking until a contract is reached or negotiations with all
14 ranked construction managers-at-risk end.

15 *d.* The governmental entity shall make available to the
16 public the final scoring and ranking evaluation of the request
17 for proposals received.

18 5. *a.* If the estimated total cost of trade contract work
19 and materials packages is in excess of the adjusted competitive
20 bid threshold established in section 314.1B, the construction
21 manager-at-risk shall advertise for competitive bids, receive
22 bids, prepare bid analyses, and award contracts to qualified
23 firms on trade contract work and materials packages in
24 accordance with all of the following:

25 (1) Prior to advertising for competitive bids and awarding
26 contracts on trade contract work and materials packages, the
27 construction manager-at-risk shall provide public notice of the
28 opportunity to submit bids on trade contract work and materials
29 packages in a relevant contractor plan room service with
30 statewide circulation, a relevant construction lead generating
31 service with statewide circulation, and on an internet site
32 sponsored by either a governmental entity or a statewide
33 association that represents the governmental entity.

34 (2) (a) The construction manager-at-risk shall utilize
35 objective prequalification criteria to develop a list of

1 qualified firms who may bid and be awarded a contract on a
2 particular trade contract work and materials package. All
3 firms who meet the objective prequalification criteria as
4 a qualified firm shall be allowed to submit a bid for the
5 relevant trade contract work and materials package. In
6 addition, a firm that is prequalified with the state department
7 of transportation pursuant to section 314.1 shall be considered
8 to meet the objective prequalification criteria as a qualified
9 firm and shall be allowed to submit a bid for purposes of work
10 related to parking lots, streets, site development, or bridge
11 structure components.

12 (b) Prequalification criteria shall be limited to a
13 firm's experience as a contractor, capacity of key personnel,
14 technical competence, capability to perform, the past
15 performance of the firm and the firm's employees to include
16 the firm's safety record and compliance with state and federal
17 law, and availability to and familiarity with the location of
18 the project subject to bid. Prequalification criteria shall
19 be reasonably and materially related to the relevant trade
20 contract work and materials package. Prequalification criteria
21 shall be subject to the requirements of section 73A.28.

22 (3) The governmental entity and the construction
23 manager-at-risk shall participate in the bid review and
24 evaluation process. After the bids have been tabulated,
25 the contracts shall be awarded to the lowest responsive,
26 responsible bidder. All awards shall be made available to the
27 public.

28 (4) Notwithstanding any provision of this paragraph to
29 the contrary, a construction manager-at-risk shall not be
30 required to bid work that will be self-performed pursuant to
31 the contract with the governmental entity. If the construction
32 manager-at-risk intends to self-perform, the construction
33 manager-at-risk must notify the governmental entity in writing
34 of the construction manager-at-risk's intent to do so and
35 identify the trade contract work and material packages that

1 will be self-performed. A construction manager-at-risk shall
2 not be required to comply with bidding requirements for general
3 conditions as provided in the contract with the governmental
4 entity.

5 *b.* If a selected trade contractor materially defaults in
6 the performance of its work or fails to execute a contract,
7 the construction manager-at-risk may, without advertising,
8 fulfill the contract requirements or select a replacement trade
9 contractor to fulfill the contract requirements.

10 Sec. ____ . NEW SECTION. **26A.4 Prohibited contracts.**

11 1. Notwithstanding any other provision of law to the
12 contrary, a governmental entity, excluding the state board of
13 regents, shall not be authorized to enter into a design-build
14 contract for the construction of a public improvement. For
15 purposes of this subsection, "*design-build contract*" means
16 a single contract providing for both design services and
17 construction services that may include maintenance, operations,
18 preconstruction, and other related services.

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

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