

Senate File 183

H-8028

1 Amend Senate File 183, as passed by the Senate, as follows:

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

4 <Section 1. Section 26.2, Code 2022, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 01. *“Construction manager”* means a sole
7 proprietorship, partnership, corporation, or other legal
8 entity that acts as a consultant to a governmental entity
9 in the development, design, or construction phase of a
10 public improvement that has not been retained as a design
11 professional.

12 Sec. 2. Section 26.2, subsection 2, Code 2022, is amended
13 to read as follows:

14 2. *“Governmental entity”* means the state, political
15 subdivisions of the state, public school corporations, and all
16 officers, boards, or commissions empowered by law to enter
17 into contracts for the construction of public improvements,
18 excluding ~~the state board of regents and the state department~~
19 of transportation.

20 Sec. 3. Section 26.4, Code 2022, is amended to read as
21 follows:

22 **26.4 ~~Exemptions from competitive~~ Competitive bids and
23 quotations — applicability.**

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

27 2. A construction manager is subject to sections 26.3
28 and 26.14 and services provided by a construction manager
29 must be competitively bid as part of a contract for a public
30 improvement.

31 Sec. 4. Section 26.7, Code 2022, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 4. The notice to bidders may require the
34 bidder to file with the governmental entity a statement showing
35 the bidder’s financial standing, equipment, and experience in

1 the execution of like or similar work.

2 Sec. 5. Section 26.9, Code 2022, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 3. Notwithstanding subsection 1, a
5 governmental entity may reject a bid if the governmental entity
6 determines that the bidder has not performed in accordance with
7 the terms of another contract for a public improvement awarded
8 by a governmental entity to the bidder. Prior to rejecting
9 a bid, the governmental entity must make a specific finding
10 on the bidder's nonperformance and provide the bidder with
11 the opportunity to respond to the alleged nonperformance at a
12 public hearing.

13 Sec. 6. NEW SECTION. **26.21 Alternative project delivery**
14 **contracts.**

15 1. As used in this section, unless the context otherwise
16 requires:

17 *a. "Alternative project delivery contract"* means a
18 design-build contract subject to the requirements of this
19 section.

20 *b. "Best value"* means the highest overall value to the
21 governmental entity-based factors that are limited to price,
22 quality, design, technical solutions, past performance, and
23 workmanship.

24 *c. "Bridging criteria professional"* means a person,
25 corporation, partnership, or other legal entity that is
26 employed by or contracted by a governmental entity to assist
27 the governmental entity in the development of project design
28 criteria, requests for proposals, and any additional services
29 requested by the governmental entity to represent its interests
30 in relation to a project and who meets either of the following
31 requirements:

32 (1) Is duly licensed to practice architecture within the
33 state and can demonstrate specific knowledge of the project
34 type where alternative project delivery services are being
35 sought.

1 (2) Is duly licensed as a professional engineer within the
2 state and can demonstrate specific knowledge of the project
3 type where alternative project delivery services are being
4 sought.

5 *d. "Design-build"* means a project delivery method subject
6 to a two-phase, best-value, or low-bid design-build selection
7 process for which the design and construction services are
8 furnished under one contract.

9 *e. "Design-build contract"* means a contract between a
10 governmental entity and a design-builder to furnish the
11 architecture of record, engineering of record, and related
12 services as required for a given public project, and to
13 furnish the labor, materials, and other construction services
14 for the same public project. A design-build contract may be
15 conditioned upon subsequent refinements in scope and price, and
16 may permit the governmental entity to make changes in the scope
17 of the project without invalidating the design-build contract.

18 *f. "Design-build project"* means the design, construction,
19 alteration, addition, remodeling, or improvement of any
20 buildings, infrastructure, or facilities under contract with a
21 governmental entity. *"Design-build project"* does not include a
22 project for the construction, reconstruction, or improvement of
23 a highway, bridge, or culvert.

24 *g. "Design-builder"* means any individual, partnership, joint
25 venture, or corporation subject to a two-phase, best-value, or
26 low-bid design-build selection process that offers to provide
27 or provides design services and general contracting services
28 through a design-build contract in which services within
29 the scope of the practice of professional architecture or
30 engineering are performed respectively by a licensed architect
31 or licensed engineer and in which services within the scope of
32 general contracting are performed by a general contractor or
33 other legal entity that furnishes architecture or engineering
34 services and construction services either directly or through
35 subcontracts or joint ventures.

1 *h. "Design bridging criteria package"* means the
2 performance-oriented program, scope, design, and performance
3 specifications for a design-build project sufficient to permit
4 a design-builder to prepare a response to a governmental
5 entity's request for proposals for a design-build project.

6 *i. "Low-bid design-build selection process"* means the process
7 used by a governmental entity seeking to enter a design-build
8 contract as outlined in subsection 8, paragraph "b".

9 *j. "Low-bid design-build threshold"* means the greater of
10 five million dollars or the adjusted low-bid cost threshold
11 established in section 314.1B.

12 *k. "Proposal"* means an offer by a design-builder in response
13 to a request for proposals to enter into a design-build
14 contract.

15 *l. "Request for proposals"* means the document by which
16 a governmental entity solicits proposals for a design-build
17 contract.

18 *m. "Stipend"* means a payment to a design-builder who did
19 not have the lowest adjusted score at the conclusion of the
20 two-phase, best-value selection process to defray the cost of
21 participating in the two-phase, best-value selection process,
22 and for the use of any intellectual properties obtained.

23 *n. "Two-phase, best-value selection process"* means the
24 process used by a governmental entity seeking to enter a
25 design-build contract as outlined in subsection 8, paragraph
26 "a".

27 *o. "Two-phase, best-value threshold"* means the greater of
28 twenty-five million dollars or the adjusted best-value cost
29 threshold established in section 314.1B.

30 2. Notwithstanding any other law to the contrary, a
31 governmental entity shall be authorized to enter into an
32 alternative project delivery contract for a public improvement
33 subject to the requirements of this section.

34 3. In soliciting proposals for a design-build contract,
35 a governmental entity shall determine the scope and level of

1 detail required to permit design-builders to submit proposals
2 in accordance with the request for proposals given the nature
3 of the project.

4 4. a. A bridging criteria professional may be retained
5 by the governmental entity as the governmental entity's
6 representative to advise the governmental entity on
7 design-build matters. The retention of the bridging criteria
8 professional shall be exclusively to guide and administer
9 the governmental entity's interests through the process.
10 The bridging criteria professional shall have demonstrated
11 sufficient previous experience in rules and procedures
12 specific to the design-build process. The bridging criteria
13 professional shall, along with the governmental entity, be
14 authorized to make recommendations or influence the acceptance
15 of any material, process, or procedure used during the design
16 and construction processes in accordance with the criteria
17 established for the project for the purpose of evaluating
18 compliance of the work. The bridging criteria professional
19 may be employed or contracted by the governmental entity to
20 act on behalf of the governmental entity for the sole purpose
21 of administrative procedures and shall not be connected in
22 any means to a design-build team responding to the request
23 for proposal. The duration of bridging criteria professional
24 services, prior to the issuance of a design-build contract,
25 may begin when establishing the governmental entity's program
26 requirements through design development if the complexity of
27 the project with the governmental entity merits this level of
28 bridging information.

29 b. (1) The design bridging criteria package shall include
30 preliminary designs for the project.

31 (2) Longevity of materials and system performance
32 requirements shall be identified in the design bridging
33 criteria package to identify materials and systems that have
34 the potential to exceed the length of time the project is
35 funded.

1 (3) The design bridging criteria package shall also include
2 preliminary civil and landscape drawings including outline
3 specification showing technical site engineering and storm
4 water detention, topographic survey and existing conditions
5 information, and preliminary geotechnical and environmental
6 reports; tabular and architectural drawings of program elements
7 indicating the room types, sizes, and typical furnishings
8 to include desired building room adjacencies and functional
9 organizational requirements; any electrical, mechanical,
10 structural, plumbing, heating, ventilating, air conditioning,
11 fire protection, life safety, or security systems serving
12 the building, to include outline specifications with project
13 description including general description of systems and
14 finishes; schematic level code review summary; and local
15 permitting requirements.

16 (4) The design bridging criteria package may extend
17 to the schematic design level of detail, including design
18 expectations, capacity, durability, standards, ingress
19 and egress requirements, international building code
20 considerations, performance requirements, the governmental
21 entity's operational expectations, requirements for interior
22 and exterior spaces, material and building system quality
23 standards, and design and construction schedule timelines.
24 However, if the low-bid design-build selection process is used,
25 the design bridging criteria package shall be extended to
26 include the provisions described in this subparagraph.

27 5. A governmental entity shall publicly disclose its intent
28 to solicit proposals for a design-build contract and its
29 project design bridging criteria package in the same manner
30 that it would post notice for the competitive bidding process
31 in section 26.3.

32 6. In soliciting proposals for a design-build contract,
33 a governmental entity shall establish in the request for
34 proposals a time, place, and other specific instructions for
35 the receipt of proposals. Proposals not submitted in strict

1 accordance with the instructions may be subject to rejection.
2 Minor irregularities may be waived by the governmental entity.
3 7. A request for proposals shall be prepared for each
4 design-build contract and shall contain, at minimum, the
5 following elements:
6 a. The procedures to be followed for submitting proposals,
7 the criteria for evaluating proposals and their relative
8 weight, and the procedure for making awards.
9 b. The proposed terms and conditions for the design-build
10 contract, if available.
11 c. The design bridging criteria package.
12 d. A description of the drawings, specifications, or other
13 information to be submitted with the proposal, with guidance
14 as to the form and level of completeness of the drawings,
15 specifications, or other information that will be acceptable.
16 e. A schedule for planned commencement and completion of the
17 design-build contract, if available.
18 f. Budget limits for the design-build contract, if any.
19 g. Requirements including any available ratings for
20 performance bonds, payment bonds, and insurance, if any.
21 h. If using a two-phase, best-value selection process,
22 the amount of the stipend that will be available and that
23 responsive bidders shall submit a technical proposal and a
24 sealed price proposal.
25 i. If using a low-bid design-build selection process, scope
26 of work, plans, and specifications, the required bid form, the
27 contract completion date or construction days, a design-build
28 evaluation plan identifying the evaluation criteria along with
29 corresponding standards, a description of what constitutes a
30 nonresponsive proposal, and a provision that responsive bidders
31 must submit their design-build technical and sealed price
32 proposals simultaneously.
33 j. Any other information that the governmental entity
34 chooses to request limited to surveys, soil reports, drawings
35 of existing structures, environmental studies, photographs, a

1 firm's experience as a contractor inclusive of projects in all
2 delivery methods, references to public records, or affirmative
3 action and minority business enterprise requirements consistent
4 with state and federal law.

5 8. A governmental entity seeking to enter into a
6 design-build contract shall solicit design-build proposals
7 either by using a two-phase, best-value, or a low-bid
8 design-build selection process subject to the requirements
9 of this chapter. A two-phase, best-value selection process
10 may be used only if the estimated total cost of the public
11 improvement exceeds the two-phase, best-value threshold. The
12 low-bid design-build selection process may be used only if the
13 estimated total cost of the public improvement exceeds the
14 low-bid design-build threshold.

15 a. When solicitations require a two-phase, best-value
16 selection process, the selection process shall be conducted and
17 a design-build contract awarded as follows:

18 (1) In phase one, the governmental entity or bridging
19 criteria professional on behalf of the governmental entity
20 shall score the technical proposals using the selection
21 criteria in the request for proposals. The governmental entity
22 or bridging criteria professional shall then submit a technical
23 proposal score for each design-builder. The governmental
24 entity or bridging criteria professional shall reject any
25 proposal it deems nonresponsive.

26 (2) In phase two, the governmental entity shall announce
27 the technical proposal score for each design-builder and
28 shall publicly open the sealed price proposals for each
29 design-builder and shall determine an adjusted score for each
30 proposal as follows:

31 (a) If a time factor is not included with the selection
32 criteria in the requests for proposals, the governmental
33 entity shall obtain the adjusted score by dividing each
34 design-builder's price by the technical score that the
35 governmental entity or bridging criteria professional has given

1 to that design-builder.

2 (b) If a time factor is included with the selection criteria
3 in the requests for proposals, the governmental entity may
4 adjust the design-builder's price using a value of the time
5 factor established by the governmental entity. The value of
6 the time factor must be expressed as a value per day. The
7 adjustment must be based on the total time value which is the
8 design-builder's total number of days to complete the project
9 multiplied by the time factor. The time-adjusted price is the
10 total time value plus the bid amount. This adjustment shall
11 only be used for selection purposes and must not affect the
12 governmental entity's liquidated damages schedule or incentive
13 or disincentive program. An adjusted score will then be
14 obtained by dividing each design-builder's time-adjusted price
15 by the technical score that the governmental entity or bridging
16 criteria professional has given the design-builder.

17 (3) Unless all proposals are rejected, the governmental
18 entity shall award the contract to the responsive and
19 responsible design-builder with the lowest adjusted score as
20 determined pursuant to this paragraph. The governmental entity
21 shall reserve the right to reject all proposals.

22 (4) As an inducement to qualified design-builders, the
23 governmental entity shall pay a stipend, the amount of which
24 shall be established in the request for proposals, to each
25 design-builder who submitted a proposal but was not accepted.
26 Such stipend shall be no less than one-half of one percent
27 of the total project budget. Upon payment of the stipend to
28 such a design-builder, the governmental entity shall acquire
29 a nonexclusive right to use the design submitted by the
30 design-builder, and the design-builder shall have no further
31 liability for the use of the design by the governmental entity
32 in any manner. If the design-builder desires to retain all
33 rights and interests in the design proposed, the design-builder
34 shall forfeit the stipend.

35 b. When solicitations require a low-bid design-build

1 selection process, the selection process shall be conducted and
2 a design-build contract awarded as follows:

3 (1) The governmental entity shall develop evaluation
4 criteria based on the goals and risks identified for the
5 project. The criteria shall be evaluated on either a scored
6 or a pass or fail basis. To the extent possible, evaluation
7 criteria should have a measurable standard against which
8 responsiveness will be measured on a pass or fail basis.

9 (2) The governmental entity shall first review technical
10 proposals to determine which proposals are responsive to
11 the evaluation criteria in the request for proposals. All
12 responsive proposals meeting the minimum standards shall
13 advance to opening the price proposals. Design-build bidders
14 not meeting the minimum standards shall have their sealed price
15 proposals returned.

16 (3) Following review and evaluation of the technical
17 proposal, the governmental entity shall then open and
18 review the price proposals from the responsive bidders. The
19 governmental entity shall award the contract to the bidder that
20 submits a responsive proposal with the lowest price, if the
21 proposal meets or exceeds all material request for proposals
22 requirements as determined by the governmental entity. To be
23 responsive, the technical proposal must meet or exceed the
24 requirements specified in the request for proposals.

25 9. A governmental entity or the state department of
26 transportation shall not be authorized to enter into an
27 alternative project delivery contract for projects relating to
28 highway, bridge, or culvert construction.

29 Sec. 7. Section 262.56, Code 2022, is amended to read as
30 follows:

31 **262.56 Authorization — contracts — title.**

32 Subject to and in accordance with the provisions of this
33 subchapter the state board of regents is hereby authorized
34 to undertake and carry out any project as defined in section
35 262.55 at the state university of Iowa, Iowa state university

1 of science and technology, and the university of northern
2 Iowa and to operate, control, maintain and manage student
3 residence halls and dormitories, including dining and other
4 incidental facilities, and additions to such buildings at each
5 of said institutions. All contracts for the construction,
6 reconstruction, completion, equipment, improvement, repair or
7 remodeling of any buildings, additions or facilities shall be
8 let in accordance with the provisions of [section 262.34 26.3](#).
9 The title to all real estate acquired under the provisions of
10 this subchapter and the improvements erected thereon shall be
11 taken and held in the name of the state of Iowa. The board
12 is authorized to rent the rooms in such residence halls and
13 dormitories to the students, officers, guests and employees
14 of said institutions at such rates, fees or rentals as will
15 provide a reasonable return upon the investment, but which will
16 in any event produce net rents, profits and income sufficient
17 to insure the payment of the principal of and interest on all
18 bonds or notes issued to pay any part of the cost of any project
19 and refunding bonds or notes issued pursuant to the provisions
20 of [this subchapter](#).

21 Sec. 8. Section 262A.4, Code 2022, is amended to read as
22 follows:

23 **262A.4 Authorization of general assembly and governor.**

24 Subject to and in accordance with the provisions of this
25 chapter, the state board of regents after authorization by a
26 constitutional majority of each house of the general assembly
27 and approval by the governor may undertake and carry out any
28 project as defined in [this chapter](#) at the institutions now or
29 hereafter under the jurisdiction of the board. The state board
30 of regents is authorized to operate, control, maintain, and
31 manage buildings and facilities and additions to such buildings
32 and facilities at each of said institutions. All contracts
33 for the construction, reconstruction, completion, equipment,
34 improvement, repair or remodeling of any buildings, additions,
35 or facilities shall be let in accordance with the provisions

1 of [section 262.34 26.3](#). The title to all real estate acquired
2 under the provisions of [this chapter](#) and the improvements
3 erected thereon shall be taken and held in the name of the
4 state of Iowa.

5 Sec. 9. Section 263A.2, Code 2022, is amended to read as
6 follows:

7 **263A.2 Authorization of general assembly and governor.**

8 Subject to and in accordance with the provisions of this
9 chapter, the state board of regents may undertake and carry out
10 any project as defined in [this chapter](#) at the state university
11 of Iowa. The state board of regents is authorized to operate,
12 control, maintain, and manage buildings and facilities and
13 additions to such buildings and facilities at said institution.
14 All contracts for the construction, reconstruction, completion,
15 equipment, improvement, repair, or remodeling of any buildings,
16 additions, or facilities shall be let in accordance with the
17 provisions of [section 262.34 26.3](#). The title to all real
18 estate acquired under the provisions of [this chapter](#) and the
19 improvements erected thereon shall be taken and held in the
20 name of the state of Iowa.

21 Sec. 10. Section 314.1, subsection 2, Code 2022, is amended
22 to read as follows:

23 2. Notwithstanding any other provision of law to the
24 contrary, a public improvement that involves the construction,
25 reconstruction, or improvement of a highway, bridge, or culvert
26 and that has a cost in excess of the applicable threshold
27 in [section 73A.18](#), ~~262.34~~, [297.7](#), [309.40](#), [310.14](#), or [313.10](#),
28 as modified by the bid threshold subcommittee pursuant to
29 section 314.1B, shall be advertised and let for bid, except
30 such public improvements that involve emergency work pursuant
31 to [section 309.40A](#), [313.10](#), or [384.103](#), subsection 2. For a
32 city having a population of fifty thousand or less, a public
33 improvement that involves the construction, reconstruction, or
34 improvement of a highway, bridge, or culvert that has a cost
35 in excess of twenty-five thousand dollars, as modified by the

1 bid threshold subcommittee pursuant to [section 314.1B](#), shall be
2 advertised and let for bid, excluding emergency work. However,
3 a public improvement that has an estimated total cost to a
4 city in excess of a threshold of fifty thousand dollars, as
5 modified by the bid threshold subcommittee pursuant to section
6 314.1B, and that involves the construction, reconstruction, or
7 improvement of a highway, bridge, or culvert that is under the
8 jurisdiction of a city with a population of more than fifty
9 thousand, shall be advertised and let for bid. Cities required
10 to competitively bid highway, bridge, or culvert work shall
11 do so in compliance with the contract letting procedures of
12 sections 26.3 through 26.12.

13 Sec. 11. Section 314.1B, subsection 2, Code 2022, is amended
14 by adding the following new paragraph:

15 NEW PARAGRAPH. *f.* Beginning July 1, 2023, the subcommittee
16 shall make adjustments to the low-bid design-build threshold
17 as defined in section 26.21 and the two-phase, best-value
18 threshold as defined in section 26.21 for vertical
19 infrastructure in accordance with the methodology of paragraph
20 “b”.

21 Sec. 12. REPEAL. Section 262.34, Code 2022, is repealed.>

22 2. Title page, by striking lines 1 through 5 and inserting
23 <An Act relating to public construction bidding.>

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MOMMSEN of Clinton