

# House File 394 - Introduced

HOUSE FILE \_\_\_\_\_  
BY KOESTER

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act establishing alternative project delivery procedures for  
2 certain public projects undertaken by political subdivisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1733YH 83  
5 md/nh/14

PAG LIN

1 1 SUBCHAPTER I  
1 2 ALTERNATIVE PROJECT DELIVERY  
1 3 Section 1. NEW SECTION. 26A.1 SHORT TITLE.  
1 4 This chapter shall be known and may be cited as the "Iowa  
1 5 Alternative Project Delivery Act".  
1 6 Sec. 2. NEW SECTION. 26A.2 DEFINITIONS.  
1 7 As used in this chapter, unless the context clearly  
1 8 indicates otherwise:  
1 9 1. "Alternative project delivery" means a method of  
1 10 procuring and delivering design and construction services  
1 11 through an integrated comprehensive design and construction  
1 12 process, including all procedures, actions, sequences of  
1 13 events, contractual relations, obligations, interrelations,  
1 14 and various forms of agreement all aimed at the successful  
1 15 completion of the design and construction of a public project,  
1 16 whereby a construction manager or design-builder is selected  
1 17 according to a qualifications-based or best value selection.  
1 18 2. "Best value selection" means the selection of a  
1 19 construction manager or a design-builder based upon a  
1 20 combination of project cost, qualifications, and other  
1 21 factors.  
1 22 3. "Construction documents" means the drawings,  
1 23 specifications, technical submissions, and other documents  
1 24 upon which a construction project is based.  
1 25 4. "Construction management contract" means a contract  
1 26 whereby a political subdivision acquires from a construction  
1 27 manager a series of preconstruction services and a financial  
1 28 obligation to carry out construction for a specified cost or  
1 29 guaranteed maximum cost agreement. A construction manager is  
1 30 not responsible for professional architectural services, as  
1 31 defined in section 544A.16, for a public project if such  
1 32 services are contracted for independent of the construction  
1 33 management contract.  
1 34 5. "Construction management services" means an alternative  
1 35 project delivery method whereby services are provided by a  
2 1 construction manager which has entered into a construction  
2 2 management contract with a political subdivision to be the  
2 3 construction manager for a public project for the compensation  
2 4 and schedule specified in the contract, which is to hold the  
2 5 trade contracts or subcontracts and execute the work for a  
2 6 project in a manner similar to a general contractor, and which  
2 7 is required to solicit competitive bids for the trade packages  
2 8 or subcontracts developed for the public project and to enter  
2 9 into the trade contracts or subcontracts for the public  
2 10 project with the lowest responsible bidder. Construction  
2 11 management services may include but are not limited to  
2 12 scheduling, value analysis, system analysis, constructability  
2 13 reviews, progress document reviews, subcontractor involvement  
2 14 and prequalification, subcontractor bonding policy, budgeting  
2 15 and price guarantees, and construction coordination.  
2 16 6. "Construction manager" means an individual,  
2 17 partnership, joint venture, corporation, or other legal entity  
2 18 that utilizes skill and knowledge of general contracting to  
2 19 perform preconstruction services and that competitively  
2 20 procures and contracts with specialty contractors, assuming

2 21 the responsibility and the risk for construction delivery  
2 22 within a specified cost and schedule.

2 23 7. "Construction services" means the process of planning,  
2 24 acquiring, building, equipping, altering, repairing,  
2 25 improving, or demolishing any structure or appurtenance  
2 26 thereto, including facilities, utilities, or other  
2 27 improvements to real property, but excluding highways, roads,  
2 28 bridges, dams, or stand-alone parking lots.

2 29 8. "Design professional" means an individual, partnership,  
2 30 joint venture, corporation, or other legal entity that is  
2 31 engaged in the business of providing professional design  
2 32 services. A design professional shall be licensed to practice  
2 33 architecture, engineering, or landscape architecture, or be  
2 34 registered to practice interior design in this state.

2 35 9. "Design-build services" means a method of alternative  
3 1 project delivery for which both design and construction  
3 2 services are provided under one contract. "Design-build  
3 3 services" may include architecture, engineering, and related  
3 4 design services required for a given project and the labor,  
3 5 materials, and other construction services for the project.

3 6 10. "Design-builder" means an individual, partnership,  
3 7 joint venture, corporation, or other legal entity that  
3 8 furnishes design-build services, whether by itself or through  
3 9 subcontracts.

3 10 11. "Estimated total cost" means the estimated total cost  
3 11 to a political subdivision to construct a public project,  
3 12 including the cost of labor, materials, equipment, supplies,  
3 13 and fees.

3 14 12. "Fee" means an amount, in excess of actual materials  
3 15 costs, paid to a construction manager or design-builder for  
3 16 services provided.

3 17 13. "General conditions" means work associated with the  
3 18 on-site management of administrative personnel, equipment, and  
3 19 utilities, including incidental work and minor field labor  
3 20 associated with a construction project.

3 21 14. "Guaranteed maximum cost" means the cost of the  
3 22 project as defined in the contract between the political  
3 23 subdivision and the construction manager or between the  
3 24 political subdivision and the design-builder.

3 25 15. "Political subdivision" means a public body or  
3 26 corporation other than the state or a state agency that has  
3 27 power to levy or certify a tax or sum of money to be collected  
3 28 by taxation.

3 29 16. "Preconstruction services" means a series of services  
3 30 including but not limited to design review, scheduling,  
3 31 estimating, cost control, value engineering, constructability  
3 32 evaluation, and preparation and coordination of bid packages.

3 33 17. "Public project" means a project under the control of  
3 34 a political subdivision that is paid for in whole or in part  
3 35 with funds of the political subdivision, including a building  
4 1 or improvement constructed or operated jointly with any other  
4 2 public or private agency. A "public project" may include  
4 3 planning, acquiring, designing, building, equipping, altering,  
4 4 repairing, improving, or demolishing any structure or  
4 5 appurtenance thereto, including facilities, utilities, or  
4 6 other improvements to any real property owned by the political  
4 7 subdivision, but excluding highways, roads, bridges, dams, or  
4 8 stand-alone parking lots. However, a parking lot included as  
4 9 part of the site work of a public project may be included as  
4 10 part of a construction management contract or a design-build  
4 11 services contract. Parking ramps and parking garages are not  
4 12 considered to be parking lots and may be a "public project"  
4 13 constructed utilizing alternative project delivery methods.

4 14 18. "Qualifications-based selection" means a selection  
4 15 process based on both a qualitative component and a cost  
4 16 component that is specific to fees, expenses related to  
4 17 general conditions, and self-performed services.

4 18 19. "Qualified professional" means an individual,  
4 19 partnership, joint venture, corporation, or other legal entity  
4 20 that has obtained professional licensure or who has  
4 21 significant professional experience in a field related to a  
4 22 proposed public project.

4 23 20. "Selection committee" means a group of individuals  
4 24 appointed by the governing body of a political subdivision for  
4 25 the purpose of selecting a construction manager or a  
4 26 design-builder for a specific public project. A selection  
4 27 committee shall have three, five, or seven members. An  
4 28 individual shall not serve on a selection committee if the  
4 29 individual has a pecuniary, equitable, or other interest in  
4 30 the public project or conditions exist that would interfere  
4 31 with the individual's ability to properly discharge the duties

4 32 of the selection committee.

4 33 21. "User delay value" means the estimated daily costs  
4 34 that a political subdivision may incur as a result of  
4 35 inability to enter into possession, occupancy, or use of a  
5 1 building or structure.

5 2 Sec. 3. NEW SECTION. 26A.3 AUTHORIZATION.

5 3 Notwithstanding chapter 26, 73A, or 573, or any other  
5 4 provision of law to the contrary, a political subdivision may  
5 5 utilize the alternative project delivery procedures under this  
5 6 chapter to procure construction management services or  
5 7 design-build services related to the completion of a public  
5 8 project.

5 9 Sec. 4. NEW SECTION. 26A.4 PUBLIC NOTICE.

5 10 For each alternative project delivery method for a public  
5 11 project under this chapter, a political subdivision shall  
5 12 publish public notices as follows:

5 13 1. The notice shall be published at least once, not less  
5 14 than fifteen and not more than forty-five days before the date  
5 15 for filing submissions, if applicable, in a newspaper  
5 16 published at least once weekly and having general circulation  
5 17 in the geographic area served by the political subdivision.

5 18 2. The notice may also be published in a relevant  
5 19 contractor organization publication and a relevant contractor  
5 20 plan room service with statewide circulation, provided that a  
5 21 notice is posted on an internet website sponsored by either  
5 22 the political subdivision or a statewide association that  
5 23 represents the political subdivision.

5 24 Sec. 5. NEW SECTION. 26A.5 PUBLIC RECORDS.

5 25 Each proposal received by a political subdivision under  
5 26 this chapter, together with the name of the proposer, after  
5 27 award or letting of the contract, is subject to public  
5 28 inspection upon request. The political subdivision shall,  
5 29 within five days after award or letting of the contract,  
5 30 publish notice of the name of the successful proposer  
5 31 including the proposer's phase II and phase III scores and  
5 32 adjusted final score received pursuant to the selection  
5 33 process under subchapter II, III, or IV. In addition, such  
5 34 notice shall include the names of all proposers whose  
5 35 proposals were not selected, together with the proposers'  
6 1 phase II and phase III scores and the final adjusted score for  
6 2 each.

6 3 Sec. 6. NEW SECTION. 26A.6 PROHIBITION ON PROVIDING  
6 4 FINANCING.

6 5 The construction manager or design-builder executing the  
6 6 construction or design of a public project utilizing an  
6 7 alternative project delivery method under this chapter shall  
6 8 not provide any financing, funding, or facility operations for  
6 9 the public project.

6 10 SUBCHAPTER II  
6 11 CONSTRUCTION MANAGEMENT  
6 12 PROJECT DELIVERY

6 13 Sec. 7. NEW SECTION. 26A.11 CONSTRUCTION MANAGEMENT  
6 14 PROJECTS.

6 15 Construction management alternative project delivery  
6 16 procedures shall be conducted as provided in this subchapter.

6 17 Sec. 8. NEW SECTION. 26A.12 SELECTION COMMITTEE.

6 18 1. When in the judgment of the governing body of a  
6 19 political subdivision it is necessary to use construction  
6 20 management services, the governing body of the political  
6 21 subdivision shall establish a selection committee for the  
6 22 purpose of selecting a construction manager for the public  
6 23 project. Prior to completion of the construction documents  
6 24 for the public project, and as early as during the schematic  
6 25 design phase, the construction manager shall be selected. The  
6 26 political subdivision shall determine the scope and level of  
6 27 detail required to permit qualified construction managers to  
6 28 submit proposals according to the request for qualifications  
6 29 and the request for proposals, given the nature of the public  
6 30 project. The request for qualifications and the request for  
6 31 proposals shall specify the selection criteria and scoring  
6 32 methodology used in the evaluation and selection process.

6 33 2. A qualified professional shall be employed or retained  
6 34 by the political subdivision to assist the selection committee  
6 35 in the selection of a construction manager. The qualified  
7 1 professional may be an employee of the political subdivision,  
7 2 the design professional employed or retained under subsection  
7 3 3, or an individual retained specifically to assist the  
7 4 political subdivision on the public project.

7 5 3. The political subdivision shall employ a design  
7 6 professional to design the public project, prepare the  
7 7 construction documents for the project, and provide

7 8 administrative services in connection with the design of the  
7 9 project. The design professional shall be selected and its  
7 10 contract negotiated pursuant to a competitive bidding process.  
7 11 Sec. 9. NEW SECTION. 26A.13 SELECTION PROCESS == GENERAL  
7 12 PROCEDURE.  
7 13 The political subdivision shall solicit proposals under  
7 14 this subchapter pursuant to a three-phase,  
7 15 qualifications-based selection process.  
7 16 1. Phase I of the selection process includes publication  
7 17 of a request for qualifications by the political subdivision,  
7 18 review of the statements of qualifications, and the selection  
7 19 of a minimum of two but not more than five construction  
7 20 managers to advance to phase II.  
7 21 2. Phase II includes a request for proposals and the  
7 22 receipt of proposals from those construction managers selected  
7 23 during phase I.  
7 24 3. Phase III includes an interview with each construction  
7 25 manager that submits a proposal during phase II, evaluation of  
7 26 each proposal by the selection committee, and selection of a  
7 27 construction manager for the public project.  
7 28 Sec. 10. NEW SECTION. 26A.14 PHASE I == REQUEST FOR  
7 29 QUALIFICATIONS, STATEMENT, EVALUATION, AND SELECTION.  
7 30 1. During phase I the political subdivision shall publish  
7 31 notice of a request for qualifications pursuant to the  
7 32 requirements of section 26A.4. The political subdivision  
7 33 shall specify in the request for qualifications a time, place,  
7 34 and other specific instructions for the receipt of the  
7 35 statements of qualifications. A statement of qualifications  
8 1 not submitted according to the instructions shall be rejected  
8 2 and returned to the construction manager.  
8 3 2. Each construction manager shall submit a statement of  
8 4 qualifications that includes but is not limited to the  
8 5 following information:  
8 6 a. Similar project experience.  
8 7 b. Experience in the construction management method of  
8 8 alternative project delivery.  
8 9 c. References from design professionals and owners from  
8 10 previous projects.  
8 11 d. A description of the construction manager's project  
8 12 management approach.  
8 13 e. The construction manager's experience modification  
8 14 rating and a description of the construction manager's safety  
8 15 plan.  
8 16 f. A description of the construction manager's experience  
8 17 and philosophy towards sustainable design and construction.  
8 18 g. Bonding capacity. Construction managers submitting a  
8 19 statement of qualifications shall be capable of providing a  
8 20 bond according to the requirements of chapter 573 and shall  
8 21 include evidence of such bonding capacity with their statement  
8 22 of qualifications. If a construction manager fails to include  
8 23 evidence of bonding capacity, that construction manager shall  
8 24 be deemed unqualified for selection under phase I.  
8 25 3. The selection committee shall evaluate and score each  
8 26 statement of qualifications received according to the  
8 27 predetermined selection criteria and scoring methodology that  
8 28 were specified in the instructions of the request for  
8 29 qualifications. The cost or fees associated with a project  
8 30 shall not be considered by the selection committee when  
8 31 evaluating a statement of qualifications.  
8 32 4. The selection committee shall select a minimum of two  
8 33 and a maximum of five qualified construction managers, who  
8 34 have the best and most relevant qualifications to perform the  
8 35 services required of the public project, to participate in  
9 1 phase II of the selection process. Scores assigned in the  
9 2 phase I evaluation process shall not carry forward to phase  
9 3 II. If two qualified construction managers cannot be  
9 4 identified, the selection process shall cease. The selection  
9 5 committee shall have discretion to disqualify any construction  
9 6 manager that lacks the minimum qualifications required to  
9 7 perform the work.  
9 8 Sec. 11. NEW SECTION. 26A.15 PHASE II == REQUEST FOR  
9 9 PROPOSALS.  
9 10 During phase II of the selection process, each construction  
9 11 manager selected during phase I shall be given a request for  
9 12 proposal. Each construction manager shall submit more  
9 13 detailed responses and a proposal that includes but is not  
9 14 limited to the following information:  
9 15 1. Resumes of proposed project personnel.  
9 16 2. An overview of preconstruction services and  
9 17 construction services to be provided.  
9 18 3. An overview of construction control processes.

9 19 4. A proposed construction safety plan.  
9 20 5. Project-specific sustainability proposals and  
9 21 recommendations.  
9 22 6. Fees and costs, including detailed estimates of general  
9 23 conditions and preconstruction costs, and fees for overhead  
9 24 and profit including fees for overhead and profit for  
9 25 self-performed construction services, if applicable. General  
9 26 conditions and preconstruction estimates shall include  
9 27 quantities and unit prices to illustrate how estimated total  
9 28 costs were calculated.

9 29 Sec. 12. NEW SECTION. 26A.16 PHASE III == PROPOSAL  
9 30 REVIEW, SELECTION, AND NEGOTIATION.

9 31 Phase III of the selection process shall be conducted as  
9 32 follows:

9 33 1. After the deadline for submission of proposals has  
9 34 passed, the selection committee shall interview each  
9 35 construction manager that has submitted a proposal  
10 1 individually, allowing each construction manager to present  
10 2 their proposed team members, qualifications, and project plan,  
10 3 and to answer questions from the selection committee.  
10 4 Interview scores shall not account for more than fifty percent  
10 5 of the total evaluation criteria.

10 6 2. The selection committee shall score each construction  
10 7 manager based on the proposal criteria and weighting factors  
10 8 identified by the political subdivision in the request for  
10 9 qualifications and the request for proposals. The political  
10 10 subdivision shall proceed to negotiate with and attempt to  
10 11 enter into a preconstruction contract with the construction  
10 12 manager receiving the highest score to serve as the  
10 13 construction manager for the public project. If the political  
10 14 subdivision is unable to negotiate a satisfactory contract  
10 15 with the construction manager with the highest total score,  
10 16 negotiations with that construction manager shall be  
10 17 terminated and the political subdivision shall undertake  
10 18 negotiations with the construction manager receiving the  
10 19 second highest score. If negotiations cannot be successfully  
10 20 completed with the construction manager receiving the second  
10 21 highest score, the contract shall not be awarded.

10 22 3. If the selection committee determines that it is not in  
10 23 the best interest of the political subdivision to proceed with  
10 24 the public project pursuant to the proposals offered, the  
10 25 selection committee shall recommend that the political  
10 26 subdivision reject all proposals. If all proposals are  
10 27 rejected, the political subdivision may solicit new statements  
10 28 of qualifications and proposals using different design or  
10 29 budget criteria.

10 30 Sec. 13. NEW SECTION. 26A.17 CONTRACT == PERFORMANCE OF  
10 31 CERTAIN SERVICES.

10 32 1. The contract to perform construction management  
10 33 services for a public project shall be prepared by the  
10 34 political subdivision and entered into between the political  
10 35 subdivision and the construction manager performing such  
11 1 construction management services at the cessation of the  
11 2 design process. The contract shall include the fee structure  
11 3 submitted by the construction manager in its proposal.  
11 4 Following completion of construction documents and all  
11 5 subcontractor bidding, the construction manager shall provide  
11 6 the political subdivision with a guaranteed maximum price.

11 7 2. a. Those portions or subcontracts of the public  
11 8 project with an estimated cost greater than ten percent of the  
11 9 estimated total cost of the public project may be accomplished  
11 10 using any alternative project delivery selection process under  
11 11 this chapter.

11 12 b. For portions or subcontracts of the public project with  
11 13 an estimated cost of ten percent or less of the estimated  
11 14 total cost of the project, contracts shall be let to the  
11 15 lowest responsible bidder pursuant to applicable requirements  
11 16 of law other than this chapter. The political subdivision may  
11 17 allow the construction manager to self-perform construction  
11 18 services if the construction manager submits a bid proposal  
11 19 under the same conditions as all other competitive bidders.  
11 20 All bid proposals submitted by the construction manager for  
11 21 self-performance shall be opened simultaneously and evaluated  
11 22 in the presence of a representative of the political  
11 23 subdivision.

11 24 SUBCHAPTER III  
11 25 DESIGN=BUILD PROJECT DELIVERY  
11 26 BEST VALUE SELECTION

11 27 Sec. 14. NEW SECTION. 26A.21 DESIGN=BUILD PROJECT  
11 28 DELIVERY == BEST VALUE SELECTION.

11 29 Design-build alternative project delivery procedures

11 30 utilizing the best value selection method for selection of a  
11 31 design-builder shall be conducted as provided in this  
11 32 subchapter.

11 33 Sec. 15. NEW SECTION. 26A.22 SELECTION COMMITTEE.

11 34 1. When in the judgment of the governing body of a  
11 35 political subdivision it is necessary to use design-build  
12 1 services pursuant to a best value selection process, the  
12 2 governing body of the political subdivision shall establish a  
12 3 selection committee for the purpose of selecting a  
12 4 design-builder for the public project. The political  
12 5 subdivision shall determine the scope and level of detail  
12 6 required to permit qualified design-builders to submit  
12 7 proposals according to the request for qualifications and the  
12 8 request for proposals given the nature of the public project.  
12 9 The request for qualifications and the request for proposals  
12 10 shall specify the selection criteria and scoring methodology  
12 11 used in the evaluation and selection process.

12 12 2. A qualified professional shall be employed or retained  
12 13 by the political subdivision to assist the selection committee  
12 14 in the selection of a design-builder. The qualified  
12 15 professional may be a current employee of the political  
12 16 subdivision or an individual retained specifically to assist  
12 17 the political subdivision on the public project. A qualified  
12 18 professional employed or retained by the political subdivision  
12 19 may not submit a statement of qualifications or a design-build  
12 20 proposal for the public project.

12 21 Sec. 16. NEW SECTION. 26A.23 BEST VALUE SELECTION  
12 22 PROCESS == GENERAL PROCEDURE.

12 23 The political subdivision shall solicit proposals under  
12 24 this subchapter pursuant to a three-phase, best value  
12 25 selection process.

12 26 1. Phase I of the selection process includes publication  
12 27 of a request for qualifications by the political subdivision,  
12 28 review of the statements of qualifications, and the selection  
12 29 of a minimum of two but not more than five design-builders to  
12 30 advance to phase II.

12 31 2. Phase II includes a request for proposals and the  
12 32 receipt of proposals from those design-builders selected  
12 33 during phase I.

12 34 3. Phase III includes submission of a cost and schedule  
12 35 proposal from each design-builder, evaluation of each proposal  
13 1 received during phase II and of the cost and schedule proposal  
13 2 by the selection committee, and selection of a design-builder  
13 3 for the public project.

13 4 Sec. 17. NEW SECTION. 26A.24 PHASE I == REQUEST FOR  
13 5 QUALIFICATIONS, STATEMENT, EVALUATION, AND SELECTION.

13 6 1. During phase I of the selection process, the political  
13 7 subdivision shall publish notice of a request for  
13 8 qualifications pursuant to the requirements of section 26A.4.  
13 9 The political subdivision shall specify in the request for  
13 10 qualifications a time, place, and other specific instructions  
13 11 for the receipt of statements of qualifications. A statement  
13 12 of qualifications not submitted according to the instructions  
13 13 shall be rejected and returned to the design-builder.

13 14 2. Each design-builder shall submit a statement of  
13 15 qualifications that includes but is not limited to the  
13 16 following information:

13 17 a. Demonstrated ability to perform projects comparable in  
13 18 design, scope, and complexity.

13 19 b. References of owners for whom design-build projects  
13 20 have been performed.

13 21 c. Qualifications of personnel who will manage the design  
13 22 and construction aspects of the public project.

13 23 d. The names and qualifications of the primary design  
13 24 consultants and contractors with whom the design-builder  
13 25 proposes to subcontract. The design-builder may not replace  
13 26 an identified contractor or consultant without the written  
13 27 approval of the political subdivision.

13 28 e. Bonding capacity. Design-builders submitting a  
13 29 statement of qualifications shall be capable of providing a  
13 30 bond according to the requirements of chapter 573, and shall  
13 31 include evidence of such bonding capacity with their statement  
13 32 of qualifications. If a design-builder fails to include  
13 33 evidence of bonding capacity, that design-builder shall be  
13 34 deemed unqualified for selection under phase I.

13 35 3. The selection committee shall evaluate and score each  
14 1 statement of qualifications received according to the  
14 2 predetermined selection criteria and scoring methodology that  
14 3 were specified in the instructions of the request for  
14 4 qualifications. The cost or fees associated with a public  
14 5 project shall not be considered by the selection committee

14 6 when evaluating a statement of qualifications.

14 7 4. The selection committee shall select a minimum of two  
14 8 and a maximum of five design-builders who have the highest  
14 9 scores to proceed to phase II. Scores assigned in the phase I  
14 10 evaluation process shall not carry forward to phase II. The  
14 11 selection committee shall have discretion to disqualify any  
14 12 design-builder that lacks the minimum qualifications required  
14 13 to perform the work. If two qualified design-builders cannot  
14 14 be identified, the design-builder selection process shall  
14 15 cease. If all design-builders are rejected, the political  
14 16 subdivision may solicit new proposals using different design  
14 17 and budget criteria.

14 18 Sec. 18. NEW SECTION. 26A.25 PHASE II == REQUEST FOR  
14 19 PROPOSALS.

14 20 1. During phase II of the selection process, each  
14 21 design-builder selected during phase I shall be given a  
14 22 request for proposals. The political subdivision shall  
14 23 specify in the request for proposals a time, place, and other  
14 24 specific instructions for the receipt of proposals. A  
14 25 proposal not submitted according to the instructions shall be  
14 26 rejected and returned to the design-builder. The request for  
14 27 proposals shall include but is not limited to the following  
14 28 information:

14 29 a. The criteria for evaluation of proposals and their  
14 30 relative weight, and the procedures for making awards.

14 31 b. The proposed terms and conditions for the design-build  
14 32 contract.

14 33 c. The design criteria package.

14 34 d. A description of the drawings, specifications, or other  
14 35 information to be submitted with the proposal, with guidance  
15 1 as to the form and level of completeness of the drawings,  
15 2 specifications, or other information that will be acceptable.

15 3 e. A schedule for planned commencement and completion of  
15 4 the design-build contract.

15 5 f. Budget limits for the design-build contract, if any.

15 6 g. Requirements, including any available ratings for  
15 7 performance bonds, payment bonds, and insurance.

15 8 h. Requirements relating to trade packages or subcontracts  
15 9 that may be procured by the design-builder. Trade packages or  
15 10 subcontracts which the design-builder chooses to include in  
15 11 their proposal shall be identified by company name in the  
15 12 proposal. Trade packages or subcontracts chosen for inclusion  
15 13 by the design-builder must have an estimated cost greater than  
15 14 ten percent of the estimated total cost of the public project  
15 15 with the exception of work to be self-performed by the  
15 16 design-builder. For all other trade packages or subcontracts,  
15 17 except work to be self-performed by the design-builder, the  
15 18 political subdivision shall advertise for public competitive  
15 19 bids as required by other applicable law.

15 20 i. Any other information that the political subdivision in  
15 21 its discretion chooses to supply including without limitation,  
15 22 surveys, soil reports, drawings of existing structures,  
15 23 environmental studies, photographs, or references to public  
15 24 records.

15 25 2. Each design-builder selected during phase I shall  
15 26 submit a proposal to the selection committee. Each proposal  
15 27 submitted under this section shall not contain references to  
15 28 costs associated with work contained in the proposal. The  
15 29 selection committee shall evaluate and score each proposal  
15 30 according to the requirements of the request for proposals.

15 31 Sec. 19. NEW SECTION. 26A.26 PHASE III == COST AND  
15 32 SCHEDULE PROPOSALS == REVIEW OF PROPOSALS.

15 33 Phase III of the selection process shall be conducted as  
15 34 follows:

15 35 1. Each design-builder that submitted a proposal in  
16 1 response to the request for proposals during phase II, shall  
16 2 also provide the selection committee with a cost and schedule  
16 3 proposal. A proposal submitted under section 26A.25 and the  
16 4 cost and schedule proposal may be submitted sequentially or  
16 5 concurrently, according to the requirements of the request for  
16 6 proposals. Failure to submit a cost and schedule proposal  
16 7 according to the delivery requirements of the request for  
16 8 proposals shall be grounds to reject the proposal.

16 9 2. The cost and schedule proposal shall include all of the  
16 10 following:

16 11 a. A guaranteed maximum price for the public project.

16 12 b. A bid security pursuant to chapter 573.

16 13 c. A proposed contract time, in calendar days, for  
16 14 completing the public project. If the proposed contract time  
16 15 is an element of evaluation, the request for proposals shall  
16 16 specify a user delay value for each proposed calendar day

16 17 identified in the proposal.  
16 18 d. Any other information required by the request for  
16 19 proposals.  
16 20 3. The cost and schedule proposals shall be opened only  
16 21 after all proposals submitted under section 26A.25 have been  
16 22 evaluated and scored. The cost and schedule proposals shall  
16 23 be opened and read aloud at the time and place specified in  
16 24 the request for proposals. At the same time and place that  
16 25 the cost and schedule proposals are opened, the selection  
16 26 committee shall make public its scoring of the proposals  
16 27 submitted under section 26A.25. Cost and schedule proposals  
16 28 shall be evaluated and scored according to the requirements of  
16 29 the request for proposals.  
16 30 4. Scores received during phase I of the selection process  
16 31 shall not carry forward. All qualified design-builders shall  
16 32 be ranked on scores given in phases II and III only. The  
16 33 phase II and phase III scores shall be combined to determine a  
16 34 total score.  
16 35 5. The selection committee shall select the design-builder  
17 1 receiving the highest total score based on the proposal  
17 2 criteria and weighting factors identified by the political  
17 3 subdivision in the request for proposals. The political  
17 4 subdivision shall proceed to negotiate with and attempt to  
17 5 enter into a preconstruction contract with the selected  
17 6 design-builder to serve as the design-builder for the public  
17 7 project. If the political subdivision is unable to negotiate  
17 8 a satisfactory contract with the selected design-builder,  
17 9 negotiations with that design-builder shall be terminated, and  
17 10 the political subdivision shall undertake negotiations with  
17 11 the design-builder receiving the second highest score. If  
17 12 negotiations cannot be successfully completed with the  
17 13 design-builder receiving the second highest score, the  
17 14 contract shall not be awarded.  
17 15 6. If the selection committee determines that it is not in  
17 16 the best interest of the political subdivision to proceed with  
17 17 the public project pursuant to the proposals offered, the  
17 18 selection committee shall recommend that the political  
17 19 subdivision reject all proposals. If all proposals are  
17 20 rejected, the political subdivision may solicit new statements  
17 21 of qualifications and proposals using different design or  
17 22 budget criteria.  
17 23 7. As an inducement to qualified design-builders, the  
17 24 political subdivision may pay a stipend, the amount of which  
17 25 shall be established in the request for proposals, to each  
17 26 design-builder who participates in phase II and phase III, but  
17 27 is not selected as the design-builder for the public project.

17 28 SUBCHAPTER IV  
17 29 DESIGN-BUILD PROJECT DELIVERY  
17 30 QUALIFICATIONS-BASED SELECTION

17 31 Sec. 20. NEW SECTION. 26A.31 DESIGN-BUILD PROJECT  
17 32 DELIVERY == QUALIFICATIONS-BASED SELECTION.

17 33 Design-build alternative project delivery procedures  
17 34 utilizing the qualifications-based selection method for  
17 35 selection of a design-builder shall be conducted as provided  
18 1 in this subchapter.

18 2 Sec. 21. NEW SECTION. 26A.32 SELECTION COMMITTEE.

18 3 1. When in the judgment of the governing body of a  
18 4 political subdivision it is necessary to use design-build  
18 5 services pursuant to a qualifications-based selection process,  
18 6 the governing body of the political subdivision shall  
18 7 establish a selection committee for the purpose of selecting a  
18 8 design-builder for the public project. The political  
18 9 subdivision shall determine the scope and level of detail  
18 10 required to permit qualified design-builders to submit  
18 11 proposals according to the request for qualifications and  
18 12 request for proposals given the nature of the public project.  
18 13 The request for qualifications and the request for proposals  
18 14 shall specify the selection criteria and scoring methodology  
18 15 used in the evaluation and selection process.

18 16 2. A qualified professional shall be employed or retained  
18 17 by the political subdivision to assist the selection committee  
18 18 in the selection of the design-builder. The qualified  
18 19 professional may be a current employee of the political  
18 20 subdivision or an individual retained specifically to assist  
18 21 the political subdivision on the public project. A qualified  
18 22 professional employed or retained by the political subdivision  
18 23 may not submit a statement of qualifications or a design-build  
18 24 proposal for the public project.

18 25 Sec. 22. NEW SECTION. 26A.33 QUALIFICATIONS-BASED  
18 26 SELECTION PROCESS == GENERAL PROCEDURE.

18 27 The political subdivision shall solicit proposals under



18 28 this subchapter pursuant to a three=phase,  
18 29 qualifications=based selection process.

18 30 1. Phase I of the selection process includes publication  
18 31 of a request for qualifications by the political subdivision,  
18 32 review of the statements of qualifications, and the selection  
18 33 of a minimum of two but not more than five design=builders to  
18 34 advance to phase II.

18 35 2. Phase II includes a request for proposals and the  
19 1 receipt of proposals from those design=builders selected  
19 2 during phase I.

19 3 3. Phase III includes an interview with each  
19 4 design=builder that submits a proposal during phase II,  
19 5 evaluation of each proposal by the selection committee, and  
19 6 selection of a design=builder for the public project.

19 7 Sec. 23. NEW SECTION. 26A.34 PHASE I == REQUEST FOR  
19 8 QUALIFICATIONS, STATEMENT, EVALUATION, AND SELECTION.

19 9 1. During phase I of the selection process, the political  
19 10 subdivision shall publish notice of a request for  
19 11 qualifications pursuant to the requirements of section 26A.4.  
19 12 The political subdivision shall specify in the request for  
19 13 qualifications a time, place, and other specific instructions  
19 14 for the receipt of statements of qualifications. A statement  
19 15 of qualifications not submitted according to the instructions  
19 16 shall be rejected and returned to the design=builder.

19 17 2. Each design=builder shall submit a statement of  
19 18 qualifications that includes but is not limited to the  
19 19 following information:

19 20 a. Demonstrated ability to perform projects comparable in  
19 21 design, scope, and complexity.

19 22 b. References of owners for whom design=build projects  
19 23 have been performed.

19 24 c. Qualifications of personnel who will manage the design  
19 25 and construction aspects of the public project.

19 26 d. The names and qualifications of the primary design  
19 27 consultants and contractors with whom the design=builder  
19 28 proposes to subcontract. The design=builder may not replace  
19 29 an identified contractor or consultant without the written  
19 30 approval of the political subdivision.

19 31 e. Bonding capacity. Design=builders submitting a  
19 32 statement of qualifications shall be capable of providing a  
19 33 bond according to the requirements of chapter 573, and shall  
19 34 include evidence of such bonding capacity with their statement  
19 35 of qualifications. If a design=builder fails to include  
20 1 evidence of bonding capacity, that design=builder shall be  
20 2 deemed unqualified for selection under phase I.

20 3 3. The selection committee shall evaluate and score each  
20 4 statement of qualifications received according to the  
20 5 predetermined selection criteria and scoring methodology. The  
20 6 cost or fees associated with a public project shall not be  
20 7 considered by the selection committee when evaluating a  
20 8 statement of qualifications.

20 9 4. The selection committee shall select a minimum of two  
20 10 and a maximum of five design=builders who have the highest  
20 11 scores to proceed to phase II. Scores assigned in the phase I  
20 12 evaluation process shall not carry forward to phase II. The  
20 13 selection committee shall have discretion to disqualify any  
20 14 design=builder that lacks the minimum qualifications required  
20 15 to perform the work. If two qualified design=builders cannot  
20 16 be identified, the design=builder selection process shall  
20 17 cease. If all design=builders are rejected, the political  
20 18 subdivision may solicit new proposals using different design  
20 19 and budget criteria.

20 20 Sec. 24. NEW SECTION. 26A.35 PHASE II == REQUEST FOR  
20 21 PROPOSALS.

20 22 During phase II of the selection process, each  
20 23 design=builder selected during phase I shall be given a  
20 24 request for proposal. Each design=builder shall submit more  
20 25 detailed responses and a proposal that includes but is not  
20 26 limited to the following information:

20 27 1. Resumes of proposed project personnel.

20 28 2. An overview of preconstruction services and  
20 29 construction services to be provided.

20 30 3. An overview of construction control processes.

20 31 4. A proposed construction safety plan.

20 32 5. Project=specific sustainability proposals and  
20 33 recommendations.

20 34 6. Fees and costs, including detailed estimates of general  
20 35 conditions and preconstruction costs, and fees for overhead  
21 1 and profit including fees for overhead and profit for  
21 2 self=performed design or construction services, if applicable.  
21 3 General conditions and preconstruction estimates shall include

21 4 quantities and unit prices to illustrate how estimated total  
21 5 costs were calculated.

21 6 Sec. 25. NEW SECTION. 26A.36 PHASE III == PROPOSAL  
21 7 REVIEW, SELECTION, AND NEGOTIATION.

21 8 Phase III of the selection process shall be conducted as  
21 9 follows:

21 10 1. After the deadline for submission of proposals has  
21 11 passed, the selection committee shall interview each  
21 12 design-builder that has submitted a proposal individually,  
21 13 allowing each design-builder to present their proposed team  
21 14 members, qualifications, and project plan, and to answer  
21 15 questions from the selection committee. Interview scores  
21 16 shall not account for more than fifty percent of the total  
21 17 evaluation criteria.

21 18 2. The selection committee shall score each design-builder  
21 19 based on the proposal criteria and weighting factors  
21 20 identified by the political subdivision in the request for  
21 21 qualifications and the request for proposals. The political  
21 22 subdivision shall proceed to negotiate with and attempt to  
21 23 enter into a preconstruction contract with the design-builder  
21 24 receiving the highest total score to serve as the  
21 25 design-builder for the public project. If the political  
21 26 subdivision is unable to negotiate a satisfactory contract  
21 27 with the design-builder with the highest total score,  
21 28 negotiations with that design-builder shall be terminated and  
21 29 the political subdivision shall undertake negotiations with  
21 30 the design-builder receiving the second highest total score.  
21 31 If negotiations cannot be successfully completed with the  
21 32 design-builder receiving the second highest score, the  
21 33 contract shall not be awarded.

21 34 3. If the selection committee determines that it is not in  
21 35 the best interest of the political subdivision to proceed with  
22 1 the public project pursuant to the proposals offered, the  
22 2 selection committee shall recommend that the political  
22 3 subdivision reject all proposals. If all proposals are  
22 4 rejected, the political subdivision may solicit new statements  
22 5 of qualifications and proposals using different design or  
22 6 budget criteria.

22 7 Sec. 26. NEW SECTION. 26A.37 CONTRACT == PERFORMANCE OF  
22 8 CERTAIN SERVICES.

22 9 1. The contract to perform design-build services for a  
22 10 public project shall be prepared by the political subdivision  
22 11 and entered into between the political subdivision and the  
22 12 design-builder selected by the selection committee. The  
22 13 contract shall include the fee structure submitted by the  
22 14 design-builder in its proposal. Following completion of  
22 15 construction documents and all subcontractor bidding, the  
22 16 design-builder shall provide the political subdivision with a  
22 17 guaranteed maximum price.

22 18 2. a. Those portions or subcontracts of the public  
22 19 project with an estimated cost greater than ten percent of the  
22 20 estimated total cost of the public project may be accomplished  
22 21 using any alternative project delivery selection process under  
22 22 this chapter.

22 23 b. For portions or subcontracts of the public project with  
22 24 an estimated cost of ten percent or less of the estimated  
22 25 total cost of the public project, contracts shall be let to  
22 26 the lowest responsible bidder pursuant to applicable  
22 27 requirements of law other than this chapter. The political  
22 28 subdivision may allow the design-builder to self-perform  
22 29 design or construction services if the design-builder submits  
22 30 a bid proposal under the same conditions as all other  
22 31 competitive bidders. All bid proposals submitted by the  
22 32 design-builder for self-performance shall be opened  
22 33 simultaneously and evaluated in the presence of a  
22 34 representative of the political subdivision.

22 35 EXPLANATION

23 1 This bill establishes a new Code chapter 26A that provides  
23 2 alternative project delivery procedures for political  
23 3 subdivisions. The bill defines "political subdivision" to  
23 4 mean a public body or corporation other than the state or a  
23 5 state agency that has power to levy or certify a tax or sum of  
23 6 money to be collected by taxation.

23 7 The bill provides that, notwithstanding any other provision  
23 8 of law to the contrary, a political subdivision may utilize  
23 9 the three alternative project delivery procedures under new  
23 10 Code chapter 26A to procure construction management services  
23 11 or design-build services, as defined in the bill, related to  
23 12 the completion of a public project. Under the bill, a public  
23 13 project means a project under the control of the political  
23 14 subdivision that is paid for in whole or in part with funds of

23 15 the political subdivision and may include planning, acquiring,  
23 16 designing, building, equipping, altering, repairing,  
23 17 improving, or demolishing any structure or appurtenance  
23 18 thereto, including facilities, utilities, or other  
23 19 improvements to any real property owned by the political  
23 20 subdivision, but excluding highways, roads, bridges, dams, or  
23 21 stand-alone parking lots.

23 22 Subchapter I of new Code chapter 26A specifies publication  
23 23 requirements for public notices provided by the political  
23 24 subdivision during the alternative project delivery procedures  
23 25 and provides that certain documents and information related to  
23 26 the alternative project delivery procedures must be made  
23 27 available for public inspection after the award or letting of  
23 28 the contract.

23 29 The three alternative project delivery procedures  
23 30 established in the bill are for construction management  
23 31 project delivery, design-build best value project delivery,  
23 32 and design-build qualifications-based project delivery. For  
23 33 each of the three alternative project delivery procedures, the  
23 34 political subdivision is required to appoint a selection  
23 35 committee and the selection procedure is conducted in three  
24 1 phases. The bill also requires the political subdivision to  
24 2 employ or retain a qualified professional to assist the  
24 3 selection committee in the selection of a construction manager  
24 4 or design-builder, as applicable.

24 5 Subchapter II of new Code chapter 26A provides the  
24 6 requirements and procedures for construction management  
24 7 project delivery. Phase I includes publication of a request  
24 8 for qualifications, review of the statements of qualifications  
24 9 received, and the selection of a minimum of two but not more  
24 10 than five construction managers to advance to phase II. Phase  
24 11 II includes a request for proposals and the receipt of  
24 12 proposals from those construction managers selected during  
24 13 phase I. Phase III includes an interview with each  
24 14 construction manager that submits a proposal during phase II,  
24 15 evaluation of each proposal by the selection committee, and  
24 16 selection of a construction manager for the public project.

24 17 Subchapter III of new Code chapter 26A provides the  
24 18 requirements and procedures for design-build best value  
24 19 project delivery. Phase I includes publication of a request  
24 20 for qualifications, review of the statements of qualifications  
24 21 received, and the selection of a minimum of two but not more  
24 22 than five design-builders to advance to phase II. Phase II  
24 23 includes a request for proposals and the receipt of proposals  
24 24 from those design-builders selected during phase I. Phase III  
24 25 includes submission of a cost and schedule proposal from each  
24 26 design-builder, evaluation of each design proposal submitted  
24 27 under phase II and cost and schedule proposal by the selection  
24 28 committee, and selection of a design-builder for the public  
24 29 project.

24 30 Subchapter IV of new Code chapter 26A provides the  
24 31 requirements and procedures for design-build  
24 32 qualifications-based project delivery. Phase I includes  
24 33 publication of a request for qualifications, review of the  
24 34 statements of qualifications received, and the selection of a  
24 35 minimum of two but not more than five design-builders to  
25 1 advance to phase II. Phase II includes a request for  
25 2 proposals and the receipt of proposals from those  
25 3 design-builders selected during phase I. Phase III includes  
25 4 an interview with each design-builder that submits a proposal  
25 5 during phase II, evaluation of each proposal by the selection  
25 6 committee, and selection of a design-builder for the public  
25 7 project.

25 8 LSB 1733YH 83  
25 9 md/nh/14