

House Study Bill 616 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON RIZER)

A BILL FOR

1 An Act relating to alternative project delivery contract
2 methods for government entities.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 26.17 Alternative project delivery
2 contracts.

3 1. As used in this section, unless the context otherwise
4 requires:

5 a. "Alternative project delivery contract" means either a
6 design-build or construction manager-at-risk contract.

7 b. "Construction manager-at-risk" means a sole
8 proprietorship, partnership, corporation, or other legal entity
9 that acts as a consultant to the government entity in the
10 development and design phases and then assumes the risk for
11 the construction, rehabilitation, alteration, or repair of a
12 project at the contracted fixed or guaranteed maximum price,
13 similar to a general contractor during the construction phase.

14 c. "Design-build" means a project delivery method subject to
15 a two or three-phase selection process for which the design and
16 construction services are furnished under one contract.

17 d. "Design-build contract" means a contract between
18 a government entity and a design-builder to furnish the
19 architecture, engineering, and related services as required for
20 a given public project, and to furnish the labor, materials,
21 and other construction services for the same public project.
22 A design-build contract may be conditioned upon subsequent
23 refinements in scope and price, and may permit the government
24 entity to make changes in the scope of the project without
25 invalidating the design-build contract.

26 e. "Design-build project" means the design, construction,
27 alteration, addition, remodeling, or improvement of any
28 buildings, infrastructure, or facilities under contract with a
29 government entity.

30 f. "Design-builder" means any individual, partnership,
31 joint venture, or corporation subject to a best-value or
32 qualification-based selection that offers to provide or
33 provides design services and general contracting services
34 through a design-build contract in which services within
35 the scope of the practice of professional architecture or

1 engineering are performed respectively by a licensed architect
2 or licensed engineer and in which services within the scope of
3 general contracting are performed by a general contractor or
4 other legal entity that furnishes architecture or engineering
5 services and construction services either directly or through
6 subcontracts or joint ventures.

7 *g. "Design criteria consultant"* means a person, corporation,
8 partnership, or other legal entity that meets any of the
9 following requirements:

10 (1) Is duly licensed and authorized to practice
11 architecture within the state of Iowa.

12 (2) Has a design-build professional certification or equal
13 training to be a design criteria consultant.

14 (3) In the case of an engineered project, is duly licensed
15 as a professional engineer within the state of Iowa within
16 the discipline of the specific design-build project, and is
17 employed by or contracted by the government entity to assist
18 the government entity in the development of project design
19 criteria, requests for proposals, and any additional services
20 requested by the government entity to represent its interests
21 in relation to a project.

22 *h. "Design criteria package"* means the performance-oriented
23 program, scope, and specifications for the design-build project
24 sufficient to permit a design-builder to prepare a response to
25 a government entity's request for proposals for a design-build
26 project, which may include capacity, durability, standards,
27 ingress and egress requirements, performance requirements,
28 description of the site, surveys, soil and environmental
29 information concerning the site, interior space requirements,
30 material quality standards, design and construction schedules,
31 site development requirements, provisions for utilities,
32 storm water retention and disposal, parking requirements,
33 applicable governmental code requirements, preliminary designs
34 for the project or portions thereof, and other criteria for the
35 intended use of the project.

1 *i.* "Government entity" means the same as "governmental
2 entity" defined in section 26.2 including, for the purpose of
3 this section, the state board of regents.

4 *j.* "Proposal" means an offer by a design-builder in response
5 to a request for proposals to enter into a design-build
6 contract.

7 *k.* "Request for proposals" means the document by which
8 a government entity solicits proposals for a design-build
9 contract.

10 1. "Stipend" means a payment to a design-builder who did not
11 score the highest number of points at the conclusion of phase
12 three of the best-value selection process to defray the cost of
13 participating in phase two of the selection process, and for
14 the use of any intellectual properties obtained.

15 2. Notwithstanding any other law to the contrary, a
16 government entity shall be authorized to enter into an
17 alternative project delivery contract.

18 3. Construction manager-at-risk contracts.

19 *a.* A government entity shall publicly disclose its intent to
20 use the construction manager-at-risk method and its selection
21 criteria at least one week prior to publishing the request
22 for proposals and request for statements of qualifications.
23 The government entity shall publish its request for proposals
24 and statements of qualifications. Before or concurrently
25 with selecting a construction manager-at-risk, the government
26 entity shall select or designate an engineer or architect
27 who shall prepare the construction documents for the project
28 and who shall comply with all state laws, as applicable. If
29 the engineer or architect is not a full-time employee of the
30 government entity, the government entity shall select the
31 engineer or architect on a basis of demonstrated competence and
32 qualifications. The government entity's engineer or architect
33 for a project may not serve, alone or in combination with
34 another, as the construction manager-at-risk. This paragraph
35 does not prohibit a government entity's engineer or architect

1 from providing customary construction-phase services under
2 the engineer's or architect's original professional service
3 agreement in accordance with applicable licensing laws.

4 *b.* The government entity may provide or contract for,
5 independently of the construction manager-at-risk, inspection
6 services, testing of construction materials, engineering, and
7 verification of testing services necessary for acceptance of
8 the project by the government entity.

9 *c.* The government entity shall select the construction
10 manager-at-risk in a two-phase process.

11 (1) Phase one. The government entity shall prepare a
12 request for statements of qualifications for the first phase.
13 The request shall include general information on the project
14 site, project scope, schedule, selection criteria, the time
15 and place for receipt of statements of qualifications, and
16 other information that may assist the government entity in its
17 selection of a construction manager-at-risk. The selection
18 criteria may include the construction manager-at-risk's
19 experience, past performance, safety record, proposed personnel
20 and methodology, and other appropriate factors that demonstrate
21 the capability of the construction manager-at-risk. The
22 government entity shall not request fees or prices in phase
23 one.

24 (2) Phase two. In phase two, the government entity
25 shall issue a request for proposals. The government entity
26 may request that no more than five nor fewer than two
27 construction managers-at-risk, selected solely on the basis
28 of qualifications, provide additional information, including
29 the construction manager-at-risk's project proposal, proposed
30 fee, and its price for fulfilling the general conditions.
31 Qualifications shall account for a minimum of forty percent
32 of the evaluation. Cost shall account for a maximum of sixty
33 percent of the evaluation.

34 *d.* For each phase, the government entity shall receive,
35 publicly open, and read aloud the names of the construction

1 managers submitting proposals. Within forty-five days
2 after the date of opening the proposals or statements of
3 qualification submissions, the government entity or its
4 representative shall evaluate and rank each proposal or
5 statement of qualifications submission in relation to the
6 criteria set forth in the applicable request.

7 *e.* The government entity or its representative shall
8 select the construction manager-at-risk that submits the
9 proposal that offers the best value for the government entity
10 based on the published selection criteria and on its ranking
11 evaluation. The government entity or its representative
12 shall first attempt to negotiate a contract with the selected
13 construction manager-at-risk. If the government entity or its
14 representative is unable to negotiate a satisfactory contract
15 with the selected construction manager-at-risk, the government
16 entity or its representative shall, formally and in writing,
17 end negotiations with that construction manager-at-risk and
18 proceed to negotiate with the next construction manager-at-risk
19 in the order of the selection ranking until a contract
20 is reached or negotiations with all ranked construction
21 managers-at-risk end.

22 *f.* The selected construction manager-at-risk shall publicly
23 advertise and receive bids or proposals from trade contractors
24 or subcontractors for the performance of all major elements
25 of the work other than the minor work that may be included
26 in the general conditions. A construction manager-at-risk
27 submits its sealed bid or sealed proposal for those portions
28 of the work in the same manner as all other trade contractors
29 or subcontractors. All sealed bids or proposals shall
30 be submitted at the time and location as specified in the
31 advertisement for bids or proposals and shall be publicly
32 opened and the identity of each bidder and their bid amount
33 shall be read aloud.

34 *g.* The construction manager-at-risk and the government
35 entity or its representative shall review all trade contractor,

1 subcontractor, or construction manager-at-risk bids or
2 proposals in a manner that does not disclose the contents of
3 the bid or proposal during the selection process to a person
4 not employed by the construction manager-at-risk, engineer,
5 architect, or government entity involved with the project. If
6 the construction manager-at-risk submitted bids or proposals,
7 the government entity shall determine if the construction
8 manager-at-risk's bid or proposal offers the best value for the
9 government entity. After all proposals have been evaluated and
10 clarified, the award of all contracts shall be made public.

11 *h.* If the construction manager-at-risk reviews, evaluates,
12 and recommends to the government entity a bid or proposal from
13 a trade contractor or subcontractor but the government entity
14 requires another bid or proposal to be accepted, the government
15 entity shall compensate the construction manager-at-risk by
16 a change in price, time, or guaranteed maximum cost for any
17 additional cost and risk that the construction manager-at-risk
18 may incur because of the government entity's requirement that
19 another bid or proposal be accepted.

20 *i.* If a selected trade contractor materially defaults in the
21 performance of its work or fails to execute a contract with a
22 construction manager-at-risk after being selected in accordance
23 with this subsection, the construction manager-at-risk may
24 itself, without advertising, fulfill the contract requirements
25 or select a replacement trade contractor to fulfill the
26 contract requirements.

27 4. In soliciting proposals for a design-build contract,
28 a government entity shall determine the scope and level of
29 detail required to permit design-builders to submit proposals
30 in accordance with the request for proposals given the nature
31 of the project.

32 5. In soliciting proposals for a design-build contract, a
33 design criteria consultant shall be employed or retained by
34 the government entity to assist in preparation of the design
35 criteria package and request for proposals and perform any

1 other additional service necessary to the project. The design
2 criteria consultant may also evaluate construction regarding
3 adherence of the design criteria. The design criteria
4 consultant may not submit a proposal or furnish design or
5 construction services for the design-build contract for which
6 its services were sought.

7 6. A government entity shall publicly disclose its intent to
8 solicit proposals for a design-build contract and its project
9 design criteria package in the same manner that it would post
10 notice for the competitive bidding process in section 26.3.

11 7. In soliciting proposals for a design-build contract, a
12 government entity shall establish in the request for proposals
13 a time, place, and other specific instructions for the receipt
14 of proposals. Proposals not submitted in strict accordance
15 with the instructions may be subject to rejection. Minor
16 irregularities may be waived by the government entity.

17 8. A request for proposals shall be prepared for each
18 design-build contract and shall contain, at minimum, the
19 following elements:

20 a. The procedures to be followed for submitting proposals,
21 the criteria for evaluating proposals and their relative
22 weight, and the procedure for making awards.

23 b. The proposed terms and conditions for the design-build
24 contract, if available.

25 c. The design criteria package.

26 d. A description of the drawings, specifications, or other
27 information to be submitted with the proposal, with guidance
28 as to the form and level of completeness of the drawings,
29 specifications, or other information that will be acceptable.

30 e. A schedule for planned commencement and completion of the
31 design-build contract, if available.

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

33 g. Requirements including any available ratings for
34 performance bonds, payment bonds, and insurance, if any.

35 h. The amount of the stipend, if any, which will be

1 available.

2 *i.* Any other information that the government entity in
3 its discretion chooses to request including but not limited
4 to surveys, soil reports, drawings of existing structures,
5 environmental studies, photographs, references to public
6 records, or affirmative action and minority business enterprise
7 requirements consistent with state and federal law.

8 9. A government entity shall solicit design-build proposals
9 either by using a three-phase, best-value process or a
10 two-phase, qualifications-based process.

11 *a.* A three-phase, best-value selection process shall be
12 conducted as follows:

13 (1) Phase one. Request for statements of qualifications of
14 design-builders.

15 (a) The government entity shall review submitted statements
16 of the qualifications and assign points to each in accordance
17 with this section and as set out in the instructions of the
18 request for qualifications.

19 (b) All design-builders shall submit a statement of
20 qualifications that shall include but not be limited to:

21 (i) Demonstrated ability to perform projects comparable in
22 design, scope, and complexity.

23 (ii) References of owners for whom design-build projects,
24 construction projects, or design projects have been performed.

25 (iii) Qualifications of personnel who will manage the
26 design and construction aspects of the project.

27 (iv) The names and qualifications of the primary design
28 consultants and the primary trade contractors with whom the
29 design-builder proposes to subcontract or joint venture. The
30 design-builder may not replace an identified contractor,
31 subcontractor, design consultant, or subconsultant without the
32 written approval of the government entity.

33 (c) The government entity shall evaluate the qualifications
34 of all the design-builders who submitted statements of
35 qualifications in accordance with the instructions of the

1 request for qualifications. Qualified design-builders
2 selected by the government entity may proceed to phase two
3 of the selection process. The evaluation shall narrow the
4 number of qualified design-builders submitting statements of
5 qualifications to not fewer than two nor more than five. Under
6 no circumstances shall price or fees be a part of the request
7 for statements of qualifications criteria. Design-builders may
8 be interviewed in either phase one or phase two of the process.
9 Points assigned in phase one of the evaluation process shall
10 not carry forward to phase two or phase three of the process.
11 All qualified design-builders shall be ranked on points given
12 in phases two and three only.

13 (d) Once no fewer than two and no more than five qualified
14 design-builders have been selected, the government entity shall
15 issue its request for proposals and provide the design-builders
16 a specified amount of time in which to concurrently assemble
17 phase two and phase three proposals.

18 (2) Phase two. Solicitation of technical proposals,
19 including conceptual design for the project.

20 (a) A design-builder shall submit its design for the project
21 to the level of detail required for the proposal along with
22 such other information the government entity requests, which
23 may include a schedule, qualifications, and experience.

24 (b) The ability of the design-builder to meet the schedule
25 for completing a project as specified by the government entity
26 may be considered as an element of evaluation in phase two.

27 (c) Under no circumstances shall the design proposal
28 contain any reference to the cost of the proposal.

29 (d) The submitted designs shall be evaluated and assigned
30 points in accordance with the requirements of the request for
31 proposals. Phase two shall account for not less than forty
32 percent and no more than sixty percent of the total point score
33 as specified in the request for proposals.

34 (3) Phase three. Proposal of construction costs.

35 (a) The government entity shall invite the selected

1 design-builders to participate in phase three. The
2 design-builders shall provide a fixed cost of design and
3 construction. The proposal shall be accompanied by bid
4 security and any other items, such as statements of minority
5 participation, as required by the request for proposals.

6 (b) Cost proposals shall be submitted in accordance with
7 the instructions in the request for proposals. The government
8 entity shall reject any proposal that is not submitted within
9 the required time frame. Phase three shall account for not
10 less than forty percent and no more than sixty percent of the
11 total point score as specified in the request for proposals.

12 (c) Proposals for phase two and phase three shall be
13 submitted concurrently at the time and place specified in the
14 request for proposals, but in separate envelopes or other means
15 of submission. The phase three cost proposals shall be opened
16 and read aloud only after phase two design proposals have been
17 evaluated and assigned points, ranked in order, and posted.
18 Cost proposals shall be opened and read aloud at the time and
19 place specified in the request for proposals. At the same time
20 and place, the evaluation team shall make public its scoring
21 of phase two. Cost proposals shall be evaluated in accordance
22 with the requirements of the request for proposals.

23 (d) If the government entity determines that it is not in
24 the best interest of the government entity to proceed with the
25 project pursuant to the proposal offered by the design-builder
26 with the highest total number of points, the government entity
27 shall reject all proposals. In this event, all design-builders
28 with lower point totals in phases two and three shall receive
29 a stipend and the responsive design-builder with the highest
30 point total shall receive an amount equal to two times the
31 stipend. If the government entity decides to award the
32 project, the responsive design-builder with the highest point
33 total shall be awarded the contract.

34 (e) As an inducement to qualified design-builders, the
35 government entity shall pay a stipend, the amount of which

1 shall be established in the request for proposals, to each
2 design-builder who submitted a proposal but was not accepted.
3 Such stipend shall be no less than one-half of one percent
4 of the total project budget. Upon payment of the stipend to
5 such a design-builder, the government entity shall acquire
6 a nonexclusive right to use the design submitted by the
7 design-builder, and the design-builder shall have no further
8 liability for the use of the design by the government entity in
9 any manner. If the design-builder desires to retain all rights
10 and interests in the design proposed, the design-builder shall
11 forfeit the stipend.

12 *b.* A two-phase, qualifications-based selection process shall
13 be conducted as follows:

14 (1) Phase one. Request for statements of qualifications of
15 design-builders.

16 (a) The government entity must prepare a request for
17 statements of qualifications. The request shall include
18 general information on the project site, project scope,
19 schedule, selection criteria, the time and place for receipt
20 of statements of qualifications, and other information
21 that may assist the government entity in its selection of a
22 design-builder.

23 (b) The government entity shall state the selection
24 criteria in the request for statements of qualifications. The
25 selection criteria may include the design-builder's experience,
26 past performance, safety record, proposed personnel and
27 methodology, and other appropriate factors that demonstrate the
28 capability of the design-builder.

29 (c) Selection criteria will be ranked and assigned points
30 for each category. Point assignments shall be included as a
31 part of the request for statements of qualifications.

32 (d) The government entity shall not request fees or prices
33 in phase one. Any submissions with disclosed fees or prices
34 will be disqualified and removed from consideration.

35 (2) Phase two. Negotiations.

1 (a) Negotiations shall be conducted, beginning with the
2 design-builder ranked first. If a contract satisfactory
3 and advantageous to the government entity can be negotiated
4 at a price considered fair and reasonable and pursuant to
5 contractual terms and conditions acceptable to the government
6 entity, the award shall be made to that design-builder.

7 (b) In the event that a contract cannot be negotiated
8 with the design-builder ranked first, negotiations with that
9 design-builder shall be formally terminated. The government
10 entity shall conduct negotiations with the next-highest-ranked
11 design-builder and continue this process until a contract can
12 be negotiated that meets the terms of subparagraph division (a)
13 of this subparagraph.

14 Sec. 2. Section 262.34, subsection 1, Code 2018, is amended
15 to read as follows:

16 1. a. When the estimated cost of construction, repairs,
17 or improvement of buildings or grounds under charge of the
18 state board of regents exceeds one hundred thousand dollars,
19 the board shall advertise for bids for the contemplated
20 improvement or construction and shall let the work to the
21 lowest responsible bidder. However, if in the judgment of
22 the board bids received are not acceptable, the board may
23 reject all bids and proceed with the construction, repair, or
24 improvement by a method as the board may determine. All plans
25 and specifications for repairs or construction, together with
26 bids on the plans or specifications, shall be filed by the
27 board and be open for public inspection. All bids submitted
28 under [this section](#) shall be accompanied by a deposit of money,
29 a certified check, or a credit union certified share draft in
30 an amount as the board may prescribe.

31 b. The state board of regents may proceed with a
32 construction, repair, or improvement by using an alternative
33 project delivery contract in accordance with the provisions of
34 section 26.17.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 Currently, a government entity must use a competitive
4 bidding process for a construction project when that project
5 is estimated to cost at least as much as a threshold defined
6 in Code section 26.3. This bill allows a government entity to
7 use an alternative project delivery contract in circumstances
8 that normally require the government entity to use competitive
9 bidding procedures. The bill defines a government entity to
10 include the state board of regents.

11 The bill creates two types of alternative project delivery
12 contracts, each with specified requirements. The first
13 alternative is the design-build contract, which can select
14 design-builders in either a three-phase or two-phase process.
15 In the three-phase process, the government entity shall first
16 request statements of qualifications from design-builders.
17 The government entity shall select at least two but no more
18 than five qualified design-builders to move on to phases two
19 and three. In the second phase, the government entity shall
20 solicit technical proposals and conceptual designs from the
21 remaining design-builders. The government entity shall pay a
22 stipend to any design-builder that participates in phase two
23 but whose contract the entity does not select. The third phase
24 involves the design-builders submitting construction costs.
25 The government entity shall award points for each proposal. If
26 the government entity chooses to award a contract, it shall
27 award the contract to the design-builder with the highest point
28 total.

29 If the government entity uses the two-phase process, the
30 government entity will request qualifications and include
31 its selection criteria. The government entity will rank the
32 qualifications of a design-builder. In the second phase, the
33 government entity shall negotiate with the highest-ranked
34 design-builder. If the two parties cannot agree to a contract
35 with terms and conditions acceptable to the government

1 entity, those negotiations shall be formally terminated
2 and the government entity shall negotiate with the next
3 highest-ranked design-builder. That process shall continue
4 until the government entity can negotiate a contract with a
5 design-builder with terms and conditions acceptable to the
6 government entity.

7 The second type of alternative project delivery method is
8 the construction manager-at-risk contract. If a government
9 entity opts to use a construction manager-at-risk contract,
10 the government entity shall select an engineer or architect
11 to prepare the construction documents for the project. That
12 engineer or architect cannot serve as the construction
13 manager-at-risk. The government entity shall use a two-phase
14 process in selecting the construction manager-at-risk. The
15 first phase shall include a request for qualifications and
16 the government entity's selection criteria. The government
17 entity may select and interview at least two but no more
18 than five of the construction managers-at-risk who submitted
19 qualifications to participate in the second phase, based solely
20 on the qualifications of those construction managers-at-risk.
21 In phase two, the construction managers-at-risk that the
22 government entity selects to interview will provide additional
23 information, including the project proposal, costs, and
24 fees. The government entity shall rank the construction
25 managers-at-risk in a manner in which qualifications account
26 for at least 40 percent of the evaluation and cost accounts
27 for no more than 60 percent of the evaluation. The government
28 entity shall select the construction manager-at-risk that
29 offers the best value based on the evaluation criteria. If
30 the two parties do not reach an agreement, the government
31 entity shall proceed with the next highest-ranked construction
32 manager-at-risk and follow this process until the government
33 entity reaches a contract with a construction manager-at-risk.
34 The selected construction manager-at-risk shall advertise for
35 and receive sealed bids for proposals from trade contractors

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1 or subcontractors and publicly review those bids with the
2 government entity in a manner that does not disclose the
3 contents of the bid or proposal during the selection process
4 to a person not employed by the construction manager-at-risk,
5 engineer, architect, or government entity involved with the
6 project. The construction manager-at-risk will select a bid in
7 consultation with the government entity.