

House File 2572 - Introduced

HOUSE FILE 2572
BY COMMITTEE ON LOCAL
GOVERNMENT

(SUCCESSOR TO HSB 674)

A BILL FOR

1 An Act relating to a construction manager-at-risk commercial
2 construction alternative delivery method and prohibiting
3 certain other alternative delivery methods in the public
4 sector.

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

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DIVISION I

PUBLIC CONSTRUCTION BIDDING REQUIREMENTS

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

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

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

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

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

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

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

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

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

DIVISION II

GUARANTEED MAXIMUM PRICE CONTRACTS

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

1 As used in this chapter, unless the context clearly
2 indicates otherwise:

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

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

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

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

20 5. "*Repair or maintenance work*" means as defined in section
21 26.2.

22 Sec. 5. NEW SECTION. **26A.2 Authorization.**

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

27 Sec. 6. NEW SECTION. **26A.3 Guaranteed maximum price
28 contract — process.**

29 1. A governmental entity shall publicly disclose the
30 governmental entity's intent to enter into a guaranteed
31 maximum price contract and the governmental entity's selection
32 criteria at least fourteen days prior to publishing a request
33 for statements of qualifications. Public disclosure shall
34 be in a relevant contractor plan room service with statewide
35 circulation, a relevant construction lead generating service

1 with statewide circulation, and on an internet site sponsored
2 by either a governmental entity or a statewide association that
3 represents the governmental entity.

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

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

25 (2) Selection criteria may include the contractor's
26 experience undertaking projects of similar size and scope
27 in either the public or private sector, past performance,
28 safety record, proposed personnel, and proposed methodology.
29 Selection criteria shall include experience in both the public
30 and the private sector. Selection criteria shall not include
31 specific delivery methods, including guaranteed maximum price
32 projects. In addition, selection criteria shall not include
33 training, testing, or other certifications that may only be
34 obtained through limited-membership organizations.

35 (3) A request for statements of qualifications under this

1 subsection shall be subject to the requirements of section
2 73A.28. In addition, a governmental entity shall not by
3 ordinance, rule, or any other action relating to the request
4 for qualifications stipulate criteria that would directly
5 or indirectly restrict the selection of a construction
6 manager-at-risk to any predetermined class of providers or
7 any other criteria other than that allowed pursuant to this
8 paragraph.

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

27 *c.* The governmental entity shall receive, publicly open, and
28 read aloud the names of the contractors submitting statements
29 of qualifications. Within forty-five days after the date of
30 opening the statements of qualifications submissions, the
31 governmental entity shall evaluate each proposal or statement
32 of qualifications submission in relation to the criteria set
33 forth in the request.

34 4. *a.* After considering the proposals based upon
35 qualifications, the governmental entity shall issue a request

1 for proposals to each contractor who meets the qualifications
2 which shall include selection and evaluation criteria. Each
3 contractor issued a request for proposals shall be permitted
4 to submit a proposal and each proposal submitted shall include
5 the construction manager-at-risk's proposed fees. The request
6 for proposals shall be subject to the requirements of section
7 73A.28.

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

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

28 *d.* The governmental entity shall make available to the
29 public the final scoring and ranking evaluation of the request
30 for proposals received.

31 5. *a.* If the estimated total cost of trade contract work
32 and materials packages is in excess of the adjusted competitive
33 bid threshold established in section 314.1B, the construction
34 manager-at-risk shall advertise for competitive bids, receive
35 bids, prepare bid analyses, and award contracts to qualified

1 firms on trade contract work and materials packages in
2 accordance with all of the following:

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

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

25 (b) Prequalification criteria shall be limited to a
26 firm's experience as a contractor, capacity of key personnel,
27 technical competence, capability to perform, the past
28 performance of the firm and the firm's employees to include
29 the firm's safety record and compliance with state and
30 federal law, and availability to and familiarity with the
31 location of the project subject to bid. Prequalification
32 criteria shall be reasonably and materially related to the
33 relevant trade contract work and materials package. The
34 prequalification criteria shall not include training, testing,
35 or other certifications that may only be obtained through

1 limited-membership organizations. Prequalification criteria
2 shall be subject to the requirements of section 73A.28.

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

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

21 *b.* If a selected trade contractor materially defaults in
22 the performance of its work or fails to execute a contract,
23 the construction manager-at-risk may, without advertising,
24 fulfill the contract requirements or select a replacement trade
25 contractor to fulfill the contract requirements.

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

27 1. Notwithstanding any other provision of law to the
28 contrary, a governmental entity shall not be authorized
29 to enter into a design-build contract for the construction
30 of a public improvement. For purposes of this subsection,
31 "*design-build contract*" means a single contract providing for
32 both design services and construction services that may include
33 maintenance, operations, preconstruction, and other related
34 services.

35 2. A governmental entity shall not be authorized to

1 enter into a guaranteed maximum price contract for public
2 improvements relating to highway and bridge construction.

3 EXPLANATION

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

6 This bill concerns public construction and improvement
7 contracts.

8 DIVISION I — PUBLIC CONSTRUCTION BIDDING REQUIREMENTS.

9 Code section 26.2 is amended to provide that the term
10 "public improvement" excludes construction work and repair
11 or maintenance work performed for a city utility under
12 Code chapter 388 when such work relates to existing utility
13 infrastructure or to establishing connections to existing
14 utility systems.

15 Code section 26.4, relating to architectural and engineering
16 services, is amended to prohibit fee-based selection of an
17 architect, landscape architect, or engineer for a public
18 improvement.

19 Code section 262.34 is amended to prohibit the state board
20 of regents from entering into a design-build contract to
21 construct, repair, or improve buildings or grounds.

22 DIVISION II — GUARANTEED MAXIMUM PRICE CONTRACTS. This
23 division allows a governmental entity to use a guaranteed
24 maximum price contract for purposes of public improvement
25 contracts.

26 New Code section 26A.1 defines, among other terms,
27 "construction manager-at-risk", "governmental entity",
28 "guaranteed maximum price contract" and "public improvement".
29 "Guaranteed maximum price contract" is defined to mean the
30 agreed to fixed or guaranteed maximum price pursuant to a
31 contract entered into by the construction manager-at-risk and
32 the governmental entity. "Construction manager-at-risk" means
33 a legal entity that assumes the risk for the construction,
34 rehabilitation, alteration, or repair of a project and
35 provides consultant services to the governmental entity in the

1 development and design phases, working collaboratively with
2 the design professionals involved. "Governmental entity" is
3 defined to mean the state, political subdivisions of the state,
4 and public school corporations, and is specifically defined to
5 include the state board of regents. "Public improvement" is
6 defined to mean the same as for purposes of Code chapter 26
7 governing public construction bidding.

8 New Code section 26A.2 authorizes a governmental entity to
9 enter into a guaranteed maximum price contract for a public
10 improvement, notwithstanding any provision of law to the
11 contrary.

12 New Code section 26A.3 establishes the process for entering
13 into a guaranteed maximum price contract. The new Code section
14 provides procedures governing public disclosure of an intent to
15 enter into a guaranteed maximum price contract, selection of
16 an engineer, landscape architect, or architect, a request for
17 qualifications process, a request for proposals and selection
18 process, and selection of trade contractors and material
19 packages.

20 New Code section 26A.4 prohibits a governmental entity from
21 entering into a design-build contract for the construction of a
22 public improvement and entering into a guaranteed maximum price
23 contract for public improvements relating to highway and bridge
24 construction.