

**House Study Bill 2 - Introduced**

HOUSE FILE \_\_\_\_\_

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

**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 or statements of qualifications,  
2 respectively. Within forty-five days after the date of opening  
3 the proposals or statements of qualification submissions, the  
4 government entity or its representative shall evaluate and rank  
5 each proposal or statement of qualifications submission in  
6 relation to the 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 of  
25 the work other than the minor work that may be included in the  
26 general conditions. A construction manager-at-risk submits  
27 its sealed bid or sealed proposal in the same manner as all  
28 other trade contractors or subcontractors. All sealed bids  
29 or proposals shall be submitted at the time and location as  
30 specified in the advertisement for bids or proposals and shall  
31 be publicly opened and the identity of each bidder and their  
32 bid amount shall be read aloud.

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

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

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

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

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

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

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

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

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

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

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

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

24 c. The design criteria package.

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

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

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

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

34 h. The amount of the stipend, if any, that will be  
35 available.

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

7     9. A government entity seeking to enter a design-build  
8 contract shall solicit design-build proposals either by  
9 using a three-phase, best-value process or a two-phase,  
10 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     (i) 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     (ii) 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 2019, 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, including construction, renovation, or  
19 repairs by a private party of a property to be lease-purchased  
20 by the board, exceeds one hundred thousand dollars, the board  
21 shall advertise for bids for the contemplated improvement or  
22 construction and shall let the work to the lowest responsible  
23 bidder. However, if in the judgment of the board bids received  
24 are not acceptable, the board may reject all bids and proceed  
25 with the construction, repair, or improvement by a method as  
26 the board may determine. All plans and specifications for  
27 repairs or construction, together with bids on the plans or  
28 specifications, shall be filed by the board and be open for  
29 public inspection. All bids submitted under [this section](#) shall  
30 be accompanied by a deposit of money, a certified check, or a  
31 credit union certified share draft in an amount as the board  
32 may prescribe.

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

1 section 26.17.

2

EXPLANATION

3

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

4

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

13 The bill creates two types of alternative project delivery  
14 contracts, each with specified requirements. The first  
15 alternative is the construction manager-at-risk contract. If a  
16 government entity opts to use a construction manager-at-risk  
17 contract, the government entity shall select an engineer  
18 or architect to prepare the construction documents for  
19 the project. That engineer or architect cannot serve as  
20 the construction manager-at-risk. The government entity  
21 shall use a two-phase process in selecting the construction  
22 manager-at-risk. The first phase shall include a request for  
23 qualifications and the government entity's selection criteria.  
24 The government entity may select at least two but no more  
25 than five of the construction managers-at-risk who submitted  
26 qualifications to participate in the second phase, based solely  
27 on the qualifications of those construction managers-at-risk.  
28 In phase two, the construction managers-at-risk that the  
29 government entity selects will provide additional information,  
30 including the project proposal, costs, and fees. The  
31 government entity shall rank the construction managers-at-risk  
32 in a manner in which qualifications account for at least 40  
33 percent of the evaluation and cost accounts for no more than 60  
34 percent of the evaluation. The government entity shall select  
35 the construction manager-at-risk that offers the best value

1 based on the evaluation criteria. If the two parties do not  
2 reach an agreement, the government entity shall proceed with  
3 the next highest-ranked construction manager-at-risk and follow  
4 this process until the government entity reaches a contract  
5 with a construction manager-at-risk. The selected construction  
6 manager-at-risk shall advertise for and receive sealed bids  
7 for proposals from trade contractors or subcontractors and  
8 publicly review those bids with the government entity in a  
9 manner that does not disclose the contents of the bid or  
10 proposal during the selection process to a person not employed  
11 by the construction manager-at-risk, engineer, architect, or  
12 government entity involved with the project. The construction  
13 manager-at-risk will select a bid in consultation with the  
14 government entity.

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

32 If the government entity uses the two-phase process, the  
33 government entity will request qualifications and include  
34 its selection criteria. The government entity will rank the  
35 qualifications of a design-builder. In the second phase, the

1 government entity shall negotiate with the highest-ranked  
2 design-builder. If the two parties cannot agree to a contract  
3 with terms and conditions acceptable to the government  
4 entity, those negotiations shall be formally terminated  
5 and the government entity shall negotiate with the next  
6 highest-ranked design-builder. That process shall continue  
7 until the government entity can negotiate a contract with a  
8 design-builder with terms and conditions acceptable to the  
9 government entity.