

House Study Bill 586 - Introduced

HOUSE FILE _____

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

A BILL FOR

1 An Act relating to public construction bidding.

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

1 DIVISION I

2 PUBLIC CONSTRUCTION BIDDING DEFINITIONS

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

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

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

12 DIVISION II

13 ALTERNATIVE PROJECT DELIVERY CONTRACTS

14 Sec. 2. NEW SECTION. 26.17 Alternative project delivery
15 contracts.

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

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

20 b. "Bridging criteria professional" means a person,
21 corporation, partnership, or other legal entity that is
22 employed by or contracted by a government entity to assist
23 the government entity in the development of project design
24 criteria, requests for proposals, and any additional services
25 requested by the government entity to represent its interests
26 in relation to a project and who meets either of the following
27 requirements:

28 (1) Is duly licensed to practice architecture within the
29 state and can demonstrate specific knowledge of the project
30 type where alternative project delivery services are being
31 sought.

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

1 *c. "Construction manager-at-risk"* means a sole
2 proprietorship, partnership, corporation, or other legal entity
3 that acts as a consultant to the government entity in the
4 development and design phases and then assumes the risk for
5 the construction, rehabilitation, alteration, or repair of a
6 project at the contracted fixed or guaranteed maximum price,
7 similar to a general contractor during the construction phase.
8 A project using a construction manager-at-risk does not include
9 the construction, reconstruction, or improvement of a highway,
10 bridge, or culvert.

11 *d. "Design-build"* means a project delivery method subject to
12 a two or three-phase selection process for which the design and
13 construction services are furnished under one contract.

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

23 *f. "Design-build project"* means the design, construction,
24 alteration, addition, remodeling, or improvement of any
25 buildings, infrastructure, or facilities under contract with a
26 government entity. *"Design-build project"* does not include a
27 project for the construction, reconstruction, or improvement of
28 a highway, bridge, or culvert.

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

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

6 *h. "Design bridging criteria package"* means the
7 performance-oriented program, scope, design, and performance
8 specifications for the design-build project sufficient to
9 permit a design-builder to prepare a response to a government
10 entity's request for proposals for a design-build project.

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

14 *j. "Proposal"* means an offer by a design-builder in response
15 to a request for proposals to enter into a design-build
16 contract.

17 *k. "Request for proposals"* means the document by which
18 a government entity solicits proposals for a design-build
19 contract.

20 1. *"Stipend"* means a payment to a design-builder who did not
21 score the highest number of points at the conclusion of phase
22 three of the best-value selection process to defray the cost of
23 participating in phase two of the selection process, and for
24 the use of any intellectual properties obtained.

25 2. Notwithstanding any other law to the contrary, a
26 government entity shall be authorized to enter into an
27 alternative project delivery contract.

28 3. Construction manager-at-risk contracts.

29 *a.* A government entity shall publicly disclose its intent to
30 use the construction manager-at-risk method and its selection
31 criteria at least one week prior to publishing the request
32 for proposals and request for statements of qualifications.
33 The government entity shall publish its request for proposals
34 and statements of qualifications. Before or concurrently
35 with selecting a construction manager-at-risk, the government

1 entity shall select or designate an engineer or architect
2 who shall prepare the construction documents for the project
3 and who shall comply with all state laws, as applicable. If
4 the engineer or architect is not a full-time employee of the
5 government entity, the government entity shall select the
6 engineer or architect on a basis of demonstrated competence and
7 qualifications. The government entity's engineer or architect
8 for a project may not serve, alone or in combination with
9 another, as the construction manager-at-risk. This paragraph
10 does not prohibit a government entity's engineer or architect
11 from providing customary construction-phase services under
12 the engineer's or architect's original professional service
13 agreement in accordance with applicable licensing laws.

14 *b.* The government entity may provide or contract for,
15 independently of the construction manager-at-risk, inspection
16 services, testing of construction materials, engineering, and
17 verification of testing services necessary for acceptance of
18 the project by the government entity.

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

21 (1) Phase one. The government entity shall prepare a
22 request for statements of qualifications for the first phase.
23 The request shall include general information on the project
24 site, project scope, schedule, selection criteria, the time
25 and place for receipt of statements of qualifications, and
26 other information that may assist the government entity in its
27 selection of a construction manager-at-risk. The selection
28 criteria may include the construction manager-at-risk's
29 experience, past performance, safety record, proposed personnel
30 and methodology, and other appropriate factors that demonstrate
31 the capability of the construction manager-at-risk. The
32 government entity shall not request fees or prices in phase
33 one.

34 (2) Phase two. In phase two, the government entity
35 shall issue a request for proposals. The government entity

1 may request that no more than five nor fewer than two
2 construction managers-at-risk, selected solely on the basis
3 of qualifications, provide additional information, including
4 the construction manager-at-risk's project proposal, proposed
5 fee, its price for fulfilling the general conditions, and its
6 distribution plan for sharing any cost savings after completion
7 of said project. Qualifications shall account for a minimum
8 of forty percent of the evaluation. Cost shall account for a
9 maximum of sixty percent of the evaluation.

10 *d.* For each phase, the government entity shall receive,
11 publicly open, and read aloud the names of the construction
12 managers submitting proposals or statements of qualifications,
13 respectively. Within forty-five days after the date of opening
14 the proposals or statements of qualification submissions, the
15 government entity or its representative shall evaluate and rank
16 each proposal or statement of qualifications submission in
17 relation to the criteria set forth in the applicable request.

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

33 *f.* The selected construction manager-at-risk shall publicly
34 advertise and receive bids or proposals from trade contractors
35 or subcontractors for the performance of all major elements of

1 the work other than the minor work that may be included in the
2 general conditions. A construction manager-at-risk submits
3 its sealed bid or sealed proposal in the same manner as all
4 other trade contractors or subcontractors. All sealed bids
5 or proposals shall be submitted at the time and location as
6 specified in the advertisement for bids or proposals and shall
7 be publicly opened and the identity of each bidder and their
8 bid amount shall be read aloud.

9 *g.* The construction manager-at-risk and the government
10 entity or its representative shall review all trade contractor,
11 subcontractor, or construction manager-at-risk bids or
12 proposals in a manner that does not disclose the contents of
13 the bid or proposal during the selection process to a person
14 not employed by the construction manager-at-risk, engineer,
15 architect, or government entity involved with the project. If
16 the construction manager-at-risk submitted bids or proposals,
17 the government entity shall determine if the construction
18 manager-at-risk's bid or proposal offers the best value for the
19 government entity. After all proposals have been evaluated and
20 clarified, the award of all contracts shall be made public.

21 *h.* If the construction manager-at-risk reviews, evaluates,
22 and recommends to the government entity a bid or proposal from
23 a trade contractor or subcontractor but the government entity
24 requires another bid or proposal to be accepted, the government
25 entity shall compensate the construction manager-at-risk by
26 a change in price, time, or guaranteed maximum cost for any
27 additional cost and risk that the construction manager-at-risk
28 may incur because of the government entity's requirement that
29 another bid or proposal be accepted.

30 *i.* If a selected trade contractor materially defaults in the
31 performance of its work or fails to execute a contract with a
32 construction manager-at-risk after being selected in accordance
33 with this subsection, the construction manager-at-risk may
34 itself, without advertising, fulfill the contract requirements
35 or select a replacement trade contractor to fulfill the

1 contract requirements.

2 4. In soliciting proposals for a design-build contract,
3 a government entity shall determine the scope and level of
4 detail required to permit design-builders to submit proposals
5 in accordance with the request for proposals given the nature
6 of the project.

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

30 *b.* The design bridging criteria package developed by the
31 bridging criteria professional, which may include preliminary
32 designs for the project, may extend to the design development
33 level of detail, including design expectations, capacity,
34 durability, standards, ingress and egress requirements,
35 international building code considerations, performance

1 requirements, the government entity's operational expectations,
2 requirements for interior and exterior spaces, material and
3 building system quality standards, and design and construction
4 schedule timelines. Longevity of materials and system
5 performance requirements shall be identified in the design
6 bridging criteria package to identify materials and systems
7 that have the potential to exceed the length of time the
8 project is funded. The design bridging criteria package may
9 include site development requirements, description of the
10 site, surveys, soil and environmental information concerning
11 the site, provisions for utilities, storm water retention
12 and disposal, parking requirements, requirements related
13 to applicable local laws, local permitting requirements,
14 preliminary designs for the project or portions thereof, and
15 other criteria for the intended use of the project.

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

21 7. In soliciting proposals for a design-build contract, a
22 government entity shall establish in the request for proposals
23 a time, place, and other specific instructions for the receipt
24 of proposals. Proposals not submitted in strict accordance
25 with the instructions may be subject to rejection. Minor
26 irregularities may be waived by the government entity.

27 8. A request for proposals shall be prepared for each
28 design-build contract and shall contain, at minimum, the
29 following elements:

30 a. The procedures to be followed for submitting proposals,
31 the criteria for evaluating proposals and their relative
32 weight, and the procedure for making awards.

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

35 c. The design bridging criteria package.

- 1 *d.* A description of the drawings, specifications, or other
2 information to be submitted with the proposal, with guidance
3 as to the form and level of completeness of the drawings,
4 specifications, or other information that will be acceptable.
- 5 *e.* A schedule for planned commencement and completion of the
6 design-build contract, if available.
- 7 *f.* Budget limits for the design-build contract, if any.
- 8 *g.* Requirements including any available ratings for
9 performance bonds, payment bonds, and insurance, if any.
- 10 *h.* If using a three-phase, best-value selection process, the
11 amount of the stipend that will be available.
- 12 *i.* Any other information that the government entity in
13 its discretion chooses to request including but not limited
14 to surveys, soil reports, drawings of existing structures,
15 environmental studies, photographs, references to public
16 records, or affirmative action and minority business enterprise
17 requirements consistent with state and federal law.
- 18 9. A government entity seeking to enter a design-build
19 contract shall solicit design-build proposals either by
20 using a three-phase, best-value process or a two-phase,
21 qualifications-based process.
- 22 *a.* When solicitations require a three-phase, best-value
23 selection process, the process shall be conducted as follows:
- 24 (1) Phase one. Request for statements of qualifications of
25 design-builders.
- 26 (a) The government entity shall review submitted statements
27 of the qualifications and assign points to each in accordance
28 with this section and as set out in the instructions of the
29 request for qualifications.
- 30 (b) All design-builders shall submit a statement of
31 qualifications that shall include but not be limited to:
- 32 (i) Demonstrated ability to perform projects comparable in
33 design, scope, and complexity.
- 34 (ii) References of owners for whom design-build projects,
35 construction projects, or design projects have been performed.

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

3 (iv) The names and qualifications of the primary design
4 consultants and the primary trade contractors with whom the
5 design-builder proposes to subcontract or joint venture. The
6 design-builder may not replace an identified contractor,
7 subcontractor, design consultant, or subconsultant without the
8 written approval of the government entity.

9 (c) The government entity shall evaluate the qualifications
10 of all the design-builders who submitted statements of
11 qualifications in accordance with the instructions of the
12 request for qualifications. Qualified design-builders
13 selected by the government entity may proceed to phase two
14 of the selection process. The evaluation shall narrow the
15 number of qualified design-builders submitting statements of
16 qualifications to not fewer than two nor more than five. Under
17 no circumstances shall price or fees be a part of the request
18 for statements of qualifications criteria. Design-builders may
19 be interviewed in either phase one or phase two of the process.
20 Points assigned in phase one of the evaluation process shall
21 not carry forward to phase two or phase three of the process.
22 All qualified design-builders shall be ranked on points given
23 in phases two and three only.

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

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

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

35 (b) The ability of the design-builder to meet the schedule

1 for completing a project as specified by the government entity
2 may be considered as an element of evaluation in phase two.

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

5 (d) The submitted designs shall be evaluated and assigned
6 points in accordance with the requirements of the request for
7 proposals. Phase two shall account for not less than forty
8 percent and no more than sixty percent of the total point score
9 as specified in the request for proposals.

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

11 (a) The government entity shall invite the selected
12 design-builders to participate in phase three. The
13 design-builders shall provide a fixed cost of design and
14 construction. The proposal shall be accompanied by bid
15 security and any other items, such as statements of minority
16 participation, as required by the request for proposals.

17 (b) Cost proposals shall be submitted in accordance with
18 the instructions in the request for proposals. The government
19 entity shall reject any proposal that is not submitted within
20 the required time frame. Phase three shall account for not
21 less than forty percent and no more than sixty percent of the
22 total point score as specified in the request for proposals.

23 (c) Proposals for phase two and phase three shall be
24 submitted concurrently at the time and place specified in the
25 request for proposals, but in separate envelopes or other means
26 of submission. The phase three cost proposals shall be opened
27 and read aloud only after phase two design proposals have been
28 evaluated and assigned points, ranked in order, and posted.
29 Cost proposals shall be opened and read aloud at the time and
30 place specified in the request for proposals. At the same time
31 and place, the evaluation team shall make public its scoring
32 of phase two. Cost proposals shall be evaluated in accordance
33 with the requirements of the request for proposals.

34 (d) If the government entity determines that it is not in
35 the best interest of the government entity to proceed with the

1 project pursuant to the proposal offered by the design-builder
2 with the highest total number of points, the government entity
3 shall reject all proposals. In this event, all design-builders
4 with lower point totals in phases two and three shall receive
5 a stipend and the responsive design-builder with the highest
6 point total shall receive an amount equal to two times the
7 stipend. If the government entity decides to award the
8 project, the responsive design-builder with the highest point
9 total shall be awarded the contract.

10 (e) As an inducement to qualified design-builders, the
11 government entity shall pay a stipend, the amount of which
12 shall be established in the request for proposals, to each
13 design-builder who submitted a proposal but was not accepted.
14 Such stipend shall be no less than one-half of one percent
15 of the total project budget. Upon payment of the stipend to
16 such a design-builder, the government entity shall acquire
17 a nonexclusive right to use the design submitted by the
18 design-builder, and the design-builder shall have no further
19 liability for the use of the design by the government entity in
20 any manner. If the design-builder desires to retain all rights
21 and interests in the design proposed, the design-builder shall
22 forfeit the stipend.

23 b. When solicitations require a two-phase,
24 qualifications-based selection process, the process shall be
25 conducted as follows:

26 (1) Phase one. Request for statements of qualifications of
27 design-builders.

28 (a) The government entity must prepare a request for
29 statements of qualifications. The request shall include
30 general information on the project site, project scope,
31 schedule, selection criteria, the time and place for receipt
32 of statements of qualifications, and other information
33 that may assist the government entity in its selection of a
34 design-builder.

35 (b) The government entity shall state the selection

1 criteria in the request for statements of qualifications. The
2 selection criteria may include the design-builder's experience,
3 past performance, safety record, proposed personnel and
4 methodology, and other appropriate factors that demonstrate the
5 capability of the design-builder.

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

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

12 (2) Phase two. Negotiations.

13 (a) Negotiations shall be conducted, beginning with the
14 design-builder ranked first. If a contract satisfactory
15 and advantageous to the government entity can be negotiated
16 at a price considered fair and reasonable and pursuant to
17 contractual terms and conditions acceptable to the government
18 entity, the award shall be made to that design-builder.

19 (b) In the event that a contract cannot be negotiated
20 with the design-builder ranked first, negotiations with that
21 design-builder shall be formally terminated. The government
22 entity shall conduct negotiations with the next-highest-ranked
23 design-builder and continue this process until a contract can
24 be negotiated that meets the terms of subparagraph division (a)
25 of this subparagraph.

26 Sec. 3. Section 262.34, subsection 1, Code 2020, is amended
27 to read as follows:

28 1. a. When the estimated cost of construction, repairs,
29 or improvement of buildings or grounds under charge of the
30 state board of regents, including construction, renovation, or
31 repairs by a private party of a property to be lease-purchased
32 by the board, exceeds one hundred thousand dollars, the board
33 shall advertise for bids for the contemplated improvement or
34 construction and shall let the work to the lowest responsible
35 bidder. However, if in the judgment of the board bids received

1 are not acceptable, the board may reject all bids and proceed
 2 with the construction, repair, or improvement by a method as
 3 the board may determine. All plans and specifications for
 4 repairs or construction, together with bids on the plans or
 5 specifications, shall be filed by the board and be open for
 6 public inspection. All bids submitted under **this section** shall
 7 be accompanied by a deposit of money, a certified check, or a
 8 credit union certified share draft in an amount as the board
 9 may prescribe.

10 b. The state board of regents may proceed with a
 11 construction, repair, or improvement by using an alternative
 12 project delivery contract in accordance with the provisions of
 13 section 26.17.

14 EXPLANATION

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

17 This bill concerns public construction bidding.

18 DIVISION I — PUBLIC CONSTRUCTION BIDDING DEFINITIONS.

19 Code section 26.2 is amended to provide that the term
 20 "public improvement" excludes construction work and repair
 21 or maintenance work performed for a city utility under
 22 Code chapter 388 when such work relates to existing utility
 23 infrastructure or to establishing connections to existing
 24 utility systems.

25 DIVISION II — ALTERNATIVE PROJECT DELIVERY CONTRACTS.

26 Division II of the bill allows a government entity to use an
 27 alternative project delivery contract in circumstances that
 28 normally require the government entity to use competitive
 29 bidding procedures. Currently, most government entities must
 30 use a competitive bidding process for a construction project
 31 when that project is estimated to cost at least as much as a
 32 threshold defined in Code section 26.3. The bill defines a
 33 government entity to include the state board of regents.

34 The bill creates two types of alternative project delivery
 35 contracts, each with specified requirements. The first

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

1 The second type of alternative project delivery method is
2 the design-build contract, which allows for the selection of
3 design-builders in either a three-phase or two-phase process.
4 Under the design-build process, a government entity may retain
5 a bridging criteria professional to advise the government
6 entity on design-build matters. In the three-phase process,
7 the government entity shall first request statements of
8 qualifications from design-builders. The government entity
9 shall select at least two but no more than five qualified
10 design-builders to move on to phases two and three. In
11 the second phase, the government entity shall solicit
12 technical proposals and conceptual designs from the remaining
13 design-builders. The government entity shall pay a stipend
14 to any design-builder that participates in phase two but
15 whose contract the entity does not select. The third phase
16 involves the design-builders submitting construction costs.
17 The government entity shall award points for each proposal. If
18 the government entity chooses to award a contract, it shall
19 award the contract to the design-builder with the highest point
20 total.

21 If the government entity uses the two-phase process, the
22 government entity will request qualifications and include
23 its selection criteria. The government entity will rank the
24 qualifications of a design-builder. In the second phase, the
25 government entity shall negotiate with the highest-ranked
26 design-builder. If the two parties cannot agree to a contract
27 with terms and conditions acceptable to the government
28 entity, those negotiations shall be formally terminated
29 and the government entity shall negotiate with the next
30 highest-ranked design-builder. That process shall continue
31 until the government entity can negotiate a contract with a
32 design-builder with terms and conditions acceptable to the
33 government entity.