

Senate File 2364 - Introduced

SENATE FILE 2364
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SSB 3153)

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 organized labor affiliated organizations or
35 other limited-membership organizations.

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

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

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

35 4. *a.* After considering the proposals based upon

1 qualifications, the governmental entity shall issue a request
2 for proposals to each contractor who meets the qualifications
3 which shall include selection and evaluation criteria. Each
4 contractor issued a request for proposals shall be permitted
5 to submit a proposal and each proposal submitted shall include
6 the construction manager-at-risk's proposed fees. The request
7 for proposals shall be subject to the requirements of section
8 73A.28.

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

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

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

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

1 bids, prepare bid analyses, and award contracts to qualified
2 firms on trade contract work and materials packages in
3 accordance with all of the following:

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

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

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

1 certifications that may only be obtained through organized
2 labor affiliated organizations or other limited-membership
3 organizations. Prequalification criteria shall be subject to
4 the requirements of section 73A.28.

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

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

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

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

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

1 services.

2 2. A governmental entity shall not be authorized to
3 enter into a guaranteed maximum price contract for public
4 improvements relating to highway and bridge construction.

5 EXPLANATION

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

8 This bill concerns public construction and improvement
9 contracts.

10 DIVISION I — PUBLIC CONSTRUCTION BIDDING REQUIREMENTS.

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

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

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

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

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

1 rehabilitation, alteration, or repair of a project and
2 provides consultant services to the governmental entity in the
3 development and design phases, working collaboratively with
4 the design professionals involved. "Governmental entity" is
5 defined to mean the state, political subdivisions of the state,
6 and public school corporations, and is specifically defined to
7 include the state board of regents. "Public improvement" is
8 defined to mean the same as for purposes of Code chapter 26
9 governing public construction bidding.

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

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

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