

Senate Study Bill 1213 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON SMITH)

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 A project using a construction manager-at-risk does not include
15 the construction, reconstruction, or improvement of a highway,
16 bridge, or culvert.

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

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

29 e. "Design-build project" means the design, construction,
30 alteration, addition, remodeling, or improvement of any
31 buildings, infrastructure, or facilities under contract with a
32 government entity. "Design-build project" does not include a
33 project for the construction, reconstruction, or improvement of
34 a highway, bridge, or culvert.

35 f. "Design-builder" means any individual, partnership,

1 joint venture, or corporation subject to a best-value or
2 qualification-based selection that offers to provide or
3 provides design services and general contracting services
4 through a design-build contract in which services within
5 the scope of the practice of professional architecture or
6 engineering are performed respectively by a licensed architect
7 or licensed engineer and in which services within the scope of
8 general contracting are performed by a general contractor or
9 other legal entity that furnishes architecture or engineering
10 services and construction services either directly or through
11 subcontracts or joint ventures.

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

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

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

19 (3) In the case of an engineered project, is duly licensed
20 as a professional engineer within the state of Iowa within
21 the discipline of the specific design-build project, and is
22 employed by or contracted by the 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.

27 *h. "Design criteria package"* means the performance-oriented
28 program, scope, and specifications for the design-build project
29 sufficient to permit a design-builder to prepare a response to
30 a government entity's request for proposals for a design-build
31 project, which may include capacity, durability, standards,
32 ingress and egress requirements, performance requirements,
33 description of the site, surveys, soil and environmental
34 information concerning the site, interior space requirements,
35 material quality standards, design and construction schedules,

1 site development requirements, provisions for utilities,
2 storm water retention and disposal, parking requirements,
3 applicable governmental code requirements, preliminary designs
4 for the project or portions thereof, and other criteria for the
5 intended use of the project.

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

9 *j.* "Proposal" means an offer by a design-builder in response
10 to a request for proposals to enter into a design-build
11 contract.

12 *k.* "Request for proposals" means the document by which
13 a government entity solicits proposals for a design-build
14 contract.

15 *l.* "Stipend" means a payment to a design-builder who did not
16 score the highest number of points at the conclusion of phase
17 three of the best-value selection process to defray the cost of
18 participating in phase two of the selection process, and for
19 the use of any intellectual properties obtained.

20 2. Notwithstanding any other law to the contrary, a
21 government entity shall be authorized to enter into an
22 alternative project delivery contract.

23 3. Construction manager-at-risk contracts.

24 *a.* A government entity shall publicly disclose its intent to
25 use the construction manager-at-risk method and its selection
26 criteria at least one week prior to publishing the request
27 for proposals and request for statements of qualifications.
28 The government entity shall publish its request for proposals
29 and statements of qualifications. Before or concurrently
30 with selecting a construction manager-at-risk, the government
31 entity shall select or designate an engineer or architect
32 who shall prepare the construction documents for the project
33 and who shall comply with all state laws, as applicable. If
34 the engineer or architect is not a full-time employee of the
35 government entity, the government entity shall select the

1 engineer or architect on a basis of demonstrated competence and
2 qualifications. The government entity's engineer or architect
3 for a project may not serve, alone or in combination with
4 another, as the construction manager-at-risk. This paragraph
5 does not prohibit a government entity's engineer or architect
6 from providing customary construction-phase services under
7 the engineer's or architect's original professional service
8 agreement in accordance with applicable licensing laws.

9 *b.* The government entity may provide or contract for,
10 independently of the construction manager-at-risk, inspection
11 services, testing of construction materials, engineering, and
12 verification of testing services necessary for acceptance of
13 the project by the government entity.

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

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

29 (2) Phase two. In phase two, the government entity
30 shall issue a request for proposals. The government entity
31 may request that no more than five nor fewer than two
32 construction managers-at-risk, selected solely on the basis
33 of qualifications, provide additional information, including
34 the construction manager-at-risk's project proposal, proposed
35 fee, and its price for fulfilling the general conditions.

1 Qualifications shall account for a minimum of forty percent
2 of the evaluation. Cost shall account for a maximum of sixty
3 percent of the evaluation.

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

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

27 *f.* The selected construction manager-at-risk shall publicly
28 advertise and receive bids or proposals from trade contractors
29 or subcontractors for the performance of all major elements of
30 the work other than the minor work that may be included in the
31 general conditions. A construction manager-at-risk submits
32 its sealed bid or sealed proposal in the same manner as all
33 other trade contractors or subcontractors. All sealed bids
34 or proposals shall be submitted at the time and location as
35 specified in the advertisement for bids or proposals and shall

1 be publicly opened and the identity of each bidder and their
2 bid amount shall be read aloud.

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

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

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

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

1 5. In soliciting proposals for a design-build contract, a
2 design criteria consultant shall be employed or retained by
3 the government entity to assist in preparation of the design
4 criteria package and request for proposals and perform any
5 other additional service necessary to the project. The design
6 criteria consultant may also evaluate construction regarding
7 adherence of the design criteria. The design criteria
8 consultant may not submit a proposal or furnish design or
9 construction services for the design-build contract for which
10 its services were sought.

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

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

21 8. A request for proposals shall be prepared for each
22 design-build contract and shall contain, at minimum, the
23 following elements:

24 a. The procedures to be followed for submitting proposals,
25 the criteria for evaluating proposals and their relative
26 weight, and the procedure for making awards.

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

29 c. The design criteria package.

30 d. A description of the drawings, specifications, or other
31 information to be submitted with the proposal, with guidance
32 as to the form and level of completeness of the drawings,
33 specifications, or other information that will be acceptable.

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

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

2 *g.* Requirements including any available ratings for
3 performance bonds, payment bonds, and insurance, if any.

4 *h.* The amount of the stipend, if any, that will be
5 available.

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

12 9. A government entity seeking to enter a design-build
13 contract shall solicit design-build proposals either by
14 using a three-phase, best-value process or a two-phase,
15 qualifications-based process.

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

18 (1) Phase one. Request for statements of qualifications of
19 design-builders.

20 (a) The government entity shall review submitted statements
21 of the qualifications and assign points to each in accordance
22 with this section and as set out in the instructions of the
23 request for qualifications.

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

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

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

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

32 (iv) The names and qualifications of the primary design
33 consultants and the primary trade contractors with whom the
34 design-builder proposes to subcontract or joint venture. The
35 design-builder may not replace an identified contractor,

1 subcontractor, design consultant, or subconsultant without the
2 written approval of the government entity.

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

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

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

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

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

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

34 (d) The submitted designs shall be evaluated and assigned
35 points in accordance with the requirements of the request for

1 proposals. Phase two shall account for not less than forty
2 percent and no more than sixty percent of the total point score
3 as specified in the request for proposals.

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

5 (a) The government entity shall invite the selected
6 design-builders to participate in phase three. The
7 design-builders shall provide a fixed cost of design and
8 construction. The proposal shall be accompanied by bid
9 security and any other items, such as statements of minority
10 participation, as required by the request for proposals.

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

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

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

1 stipend. If the government entity decides to award the
2 project, the responsive design-builder with the highest point
3 total shall be awarded the contract.

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

17 b. A two-phase, qualifications-based selection process shall
18 be conducted as follows:

19 (1) Phase one. Request for statements of qualifications of
20 design-builders.

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

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

34 (c) Selection criteria will be ranked and assigned points
35 for each category. Point assignments shall be included as a

1 part of the request for statements of qualifications.

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

5 (2) Phase two. Negotiations.

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

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

19 Sec. 2. Section 262.34, subsection 1, Code 2019, is amended
20 to read as follows:

21 1. a. When the estimated cost of construction, repairs,
22 or improvement of buildings or grounds under charge of the
23 state board of regents, including construction, renovation, or
24 repairs by a private party of a property to be lease-purchased
25 by the board, exceeds one hundred thousand dollars, the board
26 shall advertise for bids for the contemplated improvement or
27 construction and shall let the work to the lowest responsible
28 bidder. However, if in the judgment of the board bids received
29 are not acceptable, the board may reject all bids and proceed
30 with the construction, repair, or improvement by a method as
31 the board may determine. All plans and specifications for
32 repairs or construction, together with bids on the plans or
33 specifications, shall be filed by the board and be open for
34 public inspection. All bids submitted under [this section](#) shall
35 be accompanied by a deposit of money, a certified check, or a

1 credit union certified share draft in an amount as the board
2 may prescribe.

3 b. The state board of regents may proceed with a
4 construction, repair, or improvement by using an alternative
5 project delivery contract in accordance with the provisions of
6 section 26.17.

7 EXPLANATION

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

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

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

1 government entity shall rank the construction managers-at-risk
2 in a manner in which qualifications account for at least 40
3 percent of the evaluation and cost accounts for no more than 60
4 percent of the evaluation. The government entity shall select
5 the construction manager-at-risk that offers the best value
6 based on the evaluation criteria. If the two parties do not
7 reach an agreement, the government entity shall proceed with
8 the next highest-ranked construction manager-at-risk and follow
9 this process until the government entity reaches a contract
10 with a construction manager-at-risk. The selected construction
11 manager-at-risk shall advertise for and receive sealed bids
12 for proposals from trade contractors or subcontractors and
13 publicly review those bids with the government entity in a
14 manner that does not disclose the contents of the bid or
15 proposal during the selection process to a person not employed
16 by the construction manager-at-risk, engineer, architect, or
17 government entity involved with the project. The construction
18 manager-at-risk will select a bid in consultation with the
19 government entity.

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

1 total.

2 If the government entity uses the two-phase process, the
3 government entity will request qualifications and include
4 its selection criteria. The government entity will rank the
5 qualifications of a design-builder. In the second phase, the
6 government entity shall negotiate with the highest-ranked
7 design-builder. If the two parties cannot agree to a contract
8 with terms and conditions acceptable to the government
9 entity, those negotiations shall be formally terminated
10 and the government entity shall negotiate with the next
11 highest-ranked design-builder. That process shall continue
12 until the government entity can negotiate a contract with a
13 design-builder with terms and conditions acceptable to the
14 government entity.