

House File 195 - Introduced

HOUSE FILE 195

BY HUNTER, OLSON, ANDERSON,
STECKMAN, KRESSIG, WILBURN,
and STAED

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 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. "Bridging criteria professional" means a person,
8 corporation, partnership, or other legal entity that is
9 employed by or contracted by a government entity to assist
10 the government entity in the development of project design
11 criteria, requests for proposals, and any additional services
12 requested by the government entity to represent its interests
13 in relation to a project and who meets either of the following
14 requirements:

15 (1) Is duly licensed to practice architecture within the
16 state and can demonstrate specific knowledge of the project
17 type where alternative project delivery services are being
18 sought.

19 (2) Is duly licensed as a professional engineer within the
20 state and can demonstrate specific knowledge of the project
21 type where alternative project delivery services are being
22 sought.

23 c. "Construction manager-at-risk" means a sole
24 proprietorship, partnership, corporation, or other legal entity
25 that acts as a consultant to the government entity in the
26 development and design phases and then assumes the risk for
27 the construction, rehabilitation, alteration, or repair of a
28 project at the contracted fixed or guaranteed maximum price,
29 similar to a general contractor during the construction phase.
30 A project using a construction manager-at-risk does not include
31 the construction, reconstruction, or improvement of a highway,
32 bridge, or culvert.

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

1 *e. "Design-build contract"* means a contract between
2 a government entity and a design-builder to furnish the
3 architecture of record, engineering of record, and related
4 services as required for a given public project, and to
5 furnish the labor, materials, and other construction services
6 for the same public project. A design-build contract may be
7 conditioned upon subsequent refinements in scope and price, and
8 may permit the government entity to make changes in the scope
9 of the project without invalidating the design-build contract.

10 *f. "Design-build project"* means the design, construction,
11 alteration, addition, remodeling, or improvement of any
12 buildings, infrastructure, or facilities under contract with a
13 government entity. *"Design-build project"* does not include a
14 project for the construction, reconstruction, or improvement of
15 a highway, bridge, or culvert.

16 *g. "Design-builder"* means any individual, partnership,
17 joint venture, or corporation subject to a best-value or
18 qualification-based selection that offers to provide or
19 provides design services and general contracting services
20 through a design-build contract in which services within
21 the scope of the practice of professional architecture or
22 engineering are performed respectively by a licensed architect
23 or licensed engineer and in which services within the scope of
24 general contracting are performed by a general contractor or
25 other legal entity that furnishes architecture or engineering
26 services and construction services either directly or through
27 subcontracts or joint ventures.

28 *h. "Design bridging criteria package"* means the
29 performance-oriented program, scope, design, and performance
30 specifications for the design-build project sufficient to
31 permit a design-builder to prepare a response to a government
32 entity's request for proposals for a design-build project.

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

1 *j.* "Proposal" means an offer by a design-builder in response
2 to a request for proposals to enter into a design-build
3 contract.

4 *k.* "Request for proposals" means the document by which
5 a government entity solicits proposals for a design-build
6 contract.

7 1. "Stipend" means a payment to a design-builder who did not
8 score the highest number of points at the conclusion of phase
9 three of the best-value selection process to defray the cost of
10 participating in phase two of the selection process, and for
11 the use of any intellectual properties obtained.

12 2. Notwithstanding any other law to the contrary, a
13 government entity shall be authorized to enter into an
14 alternative project delivery contract.

15 3. Construction manager-at-risk contracts.

16 *a.* A government entity shall publicly disclose its intent to
17 use the construction manager-at-risk method and its selection
18 criteria at least one week prior to publishing the request
19 for proposals and request for statements of qualifications.
20 The government entity shall publish its request for proposals
21 and statements of qualifications. Before or concurrently
22 with selecting a construction manager-at-risk, the government
23 entity shall select or designate an engineer or architect
24 who shall prepare the construction documents for the project
25 and who shall comply with all state laws, as applicable. If
26 the engineer or architect is not a full-time employee of the
27 government entity, the government entity shall select the
28 engineer or architect on a basis of demonstrated competence and
29 qualifications. The government entity's engineer or architect
30 for a project may not serve, alone or in combination with
31 another, as the construction manager-at-risk. This paragraph
32 does not prohibit a government entity's engineer or architect
33 from providing customary construction-phase services under
34 the engineer's or architect's original professional service
35 agreement in accordance with applicable licensing laws.

1 *b.* The government entity may provide or contract for,
2 independently of the construction manager-at-risk, inspection
3 services, testing of construction materials, engineering, and
4 verification of testing services necessary for acceptance of
5 the project by the government entity.

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

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

21 (2) Phase two. In phase two, the government entity
22 shall issue a request for proposals. The government entity
23 may request that no more than five nor fewer than two
24 construction managers-at-risk, selected solely on the basis
25 of qualifications, provide additional information, including
26 the construction manager-at-risk's project proposal, proposed
27 fee, its price for fulfilling the general conditions, and its
28 distribution plan for sharing any cost savings after completion
29 of said project. Qualifications shall account for a minimum
30 of forty percent of the evaluation. Cost shall account for a
31 maximum of sixty percent of the evaluation.

32 *d.* For each phase, the government entity shall receive,
33 publicly open, and read aloud the names of the construction
34 managers submitting proposals or statements of qualifications,
35 respectively. Within forty-five days after the date of opening

1 the proposals or statements of qualification submissions, the
2 government entity or its representative shall evaluate and rank
3 each proposal or statement of qualifications submission in
4 relation to the criteria set forth in the applicable request.

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

20 *f.* The selected construction manager-at-risk shall publicly
21 advertise and receive bids or proposals from trade contractors
22 or subcontractors for the performance of all major elements of
23 the work other than the minor work that may be included in the
24 general conditions. A construction manager-at-risk submits
25 its sealed bid or sealed proposal in the same manner as all
26 other trade contractors or subcontractors. All sealed bids
27 or proposals shall be submitted at the time and location as
28 specified in the advertisement for bids or proposals and shall
29 be publicly opened and the identity of each bidder and their
30 bid amount shall be read aloud.

31 *g.* The construction manager-at-risk and the government
32 entity or its representative shall review all trade contractor,
33 subcontractor, or construction manager-at-risk bids or
34 proposals in a manner that does not disclose the contents of
35 the bid or proposal during the selection process to a person

1 not employed by the construction manager-at-risk, engineer,
2 architect, or government entity involved with the project. If
3 the construction manager-at-risk submitted bids or proposals,
4 the government entity shall determine if the construction
5 manager-at-risk's bid or proposal offers the best value for the
6 government entity. After all proposals have been evaluated and
7 clarified, the award of all contracts shall be made public.

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

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

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

29 5. *a.* A bridging criteria professional may be retained by
30 the government entity as the government entity's representative
31 to advise the government entity on design-build matters. The
32 use of the bridging criteria professional shall be strictly
33 to guide and administer the government's needs through the
34 process. The bridging criteria professional shall have
35 demonstrated sufficient previous experience in rules and

1 procedures specific to the design-build process. The bridging
2 criteria professional shall, along with the government
3 entity, be authorized to make recommendations or influence
4 the acceptance of any material, process, or procedure used
5 during the design and construction processes in accordance
6 with the criteria established for the project for the purpose
7 of evaluating compliance of the work. The bridging criteria
8 professional may be employed or contracted by the government
9 entity to act on behalf of the government entity for the sole
10 purpose of administrative procedures and may not be connected
11 in any means to the design-build team. The duration of
12 bridging criteria professional services, prior to the issuance
13 of a design-build contract, may begin when establishing
14 the government entity's program requirements through design
15 development if the complexity of the project with the
16 governmental entity merits this level of bridging information.

17 *b.* The design bridging criteria package developed by the
18 bridging criteria professional, which may include preliminary
19 designs for the project, may extend to the design development
20 level of detail, including design expectations, capacity,
21 durability, standards, ingress and egress requirements,
22 international building code considerations, performance
23 requirements, the government entity's operational expectations,
24 requirements for interior and exterior spaces, material and
25 building system quality standards, and design and construction
26 schedule timelines. Longevity of materials and system
27 performance requirements shall be identified in the design
28 bridging criteria package to identify materials and systems
29 that have the potential to exceed the length of time the
30 project is funded. The design bridging criteria package may
31 include site development requirements, description of the
32 site, surveys, soil and environmental information concerning
33 the site, provisions for utilities, storm water retention
34 and disposal, parking requirements, requirements related
35 to applicable local laws, local permitting requirements,

1 preliminary designs for the project or portions thereof, and
2 other criteria for the intended use of the project.

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

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

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

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

20 *b.* The proposed terms and conditions for the design-build
21 contract, if available.

22 *c.* The design bridging criteria package.

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

27 *e.* A schedule for planned commencement and completion of the
28 design-build contract, if available.

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

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

32 *h.* If using a three-phase, best-value selection process, the
33 amount of the stipend that will be available.

34 *i.* Any other information that the government entity in
35 its discretion chooses to request including but not limited

1 to surveys, soil reports, drawings of existing structures,
2 environmental studies, photographs, references to public
3 records, or affirmative action and minority business enterprise
4 requirements consistent with state and federal law.

5 9. A government entity seeking to enter a design-build
6 contract shall solicit design-build proposals either by
7 using a three-phase, best-value process or a two-phase,
8 qualifications-based process.

9 a. When solicitations require a three-phase, best-value
10 selection process, the process shall be conducted as follows:

11 (1) Phase one. Request for statements of qualifications of
12 design-builders.

13 (a) The government entity shall review submitted statements
14 of the qualifications and assign points to each in accordance
15 with this section and as set out in the instructions of the
16 request for qualifications.

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

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

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

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

25 (iv) The names and qualifications of the primary design
26 consultants and the primary trade contractors with whom the
27 design-builder proposes to subcontract or joint venture. The
28 design-builder may not replace an identified contractor,
29 subcontractor, design consultant, or subconsultant without the
30 written approval of the government entity.

31 (c) The government entity shall evaluate the qualifications
32 of all the design-builders who submitted statements of
33 qualifications in accordance with the instructions of the
34 request for qualifications. Qualified design-builders
35 selected by the government entity may proceed to phase two

1 of the selection process. The evaluation shall narrow the
2 number of qualified design-builders submitting statements of
3 qualifications to not fewer than two nor more than five. Under
4 no circumstances shall price or fees be a part of the request
5 for statements of qualifications criteria. Design-builders may
6 be interviewed in either phase one or phase two of the process.
7 Points assigned in phase one of the evaluation process shall
8 not carry forward to phase two or phase three of the process.
9 All qualified design-builders shall be ranked on points given
10 in phases two and three only.

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

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

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

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

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

27 (d) The submitted designs shall be evaluated and assigned
28 points in accordance with the requirements of the request for
29 proposals. Phase two shall account for not less than forty
30 percent and no more than sixty percent of the total point score
31 as specified in the request for proposals.

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

33 (a) The government entity shall invite the selected
34 design-builders to participate in phase three. The
35 design-builders shall provide a fixed cost of design and

1 construction. The proposal shall be accompanied by bid
2 security and any other items, such as statements of minority
3 participation, as required by the request for proposals.

4 (b) Cost proposals shall be submitted in accordance with
5 the instructions in the request for proposals. The government
6 entity shall reject any proposal that is not submitted within
7 the required time frame. Phase three shall account for not
8 less than forty percent and no more than sixty percent of the
9 total point score as specified in the request for proposals.

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

21 (d) If the government entity determines that it is not in
22 the best interest of the government entity to proceed with the
23 project pursuant to the proposal offered by the design-builder
24 with the highest total number of points, the government entity
25 shall reject all proposals. In this event, all design-builders
26 with lower point totals in phases two and three shall receive
27 a stipend and the responsive design-builder with the highest
28 point total shall receive an amount equal to two times the
29 stipend. If the government entity decides to award the
30 project, the responsive design-builder with the highest point
31 total shall be awarded the contract.

32 (e) As an inducement to qualified design-builders, the
33 government entity shall pay a stipend, the amount of which
34 shall be established in the request for proposals, to each
35 design-builder who submitted a proposal but was not accepted.

1 Such stipend shall be no less than one-half of one percent
2 of the total project budget. Upon payment of the stipend to
3 such a design-builder, the government entity shall acquire
4 a nonexclusive right to use the design submitted by the
5 design-builder, and the design-builder shall have no further
6 liability for the use of the design by the government entity in
7 any manner. If the design-builder desires to retain all rights
8 and interests in the design proposed, the design-builder shall
9 forfeit the stipend.

10 *b.* When solicitations require a two-phase,
11 qualifications-based selection process, the process shall be
12 conducted as follows:

13 (1) Phase one. Request for statements of qualifications of
14 design-builders.

15 (a) The government entity must prepare a request for
16 statements of qualifications. The request shall include
17 general information on the project site, project scope,
18 schedule, selection criteria, the time and place for receipt
19 of statements of qualifications, and other information
20 that may assist the government entity in its selection of a
21 design-builder.

22 (b) The government entity shall state the selection
23 criteria in the request for statements of qualifications. The
24 selection criteria may include the design-builder's experience,
25 past performance, safety record, proposed personnel and
26 methodology, and other appropriate factors that demonstrate the
27 capability of the design-builder.

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

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

34 (2) Phase two. Negotiations.

35 (a) Negotiations shall be conducted, beginning with the

1 design-builder ranked first. If a contract satisfactory
2 and advantageous to the government entity can be negotiated
3 at a price considered fair and reasonable and pursuant to
4 contractual terms and conditions acceptable to the government
5 entity, the award shall be made to that design-builder.

6 (b) In the event that a contract cannot be negotiated
7 with the design-builder ranked first, negotiations with that
8 design-builder shall be formally terminated. The government
9 entity shall conduct negotiations with the next-highest-ranked
10 design-builder and continue this process until a contract can
11 be negotiated that meets the terms of subparagraph division (a)
12 of this subparagraph.

13 Sec. 2. Section 262.34, subsection 1, Code 2021, is amended
14 to read as follows:

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

32 b. The state board of regents may proceed with a
33 construction, repair, or improvement by using an alternative
34 project delivery contract in accordance with the provisions of
35 section 26.17.

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EXPLANATION

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

This bill concerns public construction bidding.

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

The bill creates two types of alternative project delivery contracts, each with specified requirements. The first alternative is the construction manager-at-risk contract. If a government entity opts to use a construction manager-at-risk contract, the government entity shall select an engineer or architect to prepare the construction documents for the project. That engineer or architect cannot serve as the construction manager-at-risk. The government entity shall use a two-phase process in selecting the construction manager-at-risk. The first phase shall include a request for qualifications and the government entity's selection criteria. The government entity may select at least two but no more than five of the construction managers-at-risk who submitted qualifications to participate in the second phase, based solely on the qualifications of those construction managers-at-risk. In phase two, the construction managers-at-risk that the government entity selects will provide additional information, including the project proposal, costs, and fees. The government entity shall rank the construction managers-at-risk in a manner in which qualifications account for at least 40 percent of the evaluation and cost accounts for no more than 60 percent of the evaluation. The government entity shall select 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 allows for the selection of
17 design-builders in either a three-phase or two-phase process.
18 Under the design-build process, a government entity may retain
19 a bridging criteria professional to advise the government
20 entity on design-build matters. In the three-phase process,
21 the government entity shall first request statements of
22 qualifications from design-builders. The government entity
23 shall select at least two but no more than five qualified
24 design-builders to move on to phases two and three. In
25 the second phase, the government entity shall solicit
26 technical proposals and conceptual designs from the remaining
27 design-builders. The government entity shall pay a stipend
28 to any design-builder that participates in phase two but
29 whose contract the entity does not select. The third phase
30 involves the design-builders submitting construction costs.
31 The government entity shall award points for each proposal. If
32 the government entity chooses to award a contract, it shall
33 award the contract to the design-builder with the highest point
34 total.

35 If the government entity uses the two-phase process, the

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