

House Study Bill 55 - Introduced

HOUSE FILE _____

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

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 and including effective date and applicability
5 provisions.

6 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 26.4, Code 2021, 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. 2. Section 262.34, Code 2021, 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.

Sec. 3. EFFECTIVE DATE. The following, being deemed of immediate importance, takes effect upon enactment:

The section of this division of this Act amending section 262.34.

Sec. 4. APPLICABILITY. The section of this division of this Act amending section 262.34 does not apply to projects using design-build if an architect has entered into a contract to work with the state board of regents on a project using design-build prior to the effective date of the section of this division of this Act amending section 262.34.

DIVISION II

GUARANTEED MAXIMUM PRICE CONTRACTS

1 Sec. 5. NEW SECTION. **26A.1 Definitions.**

2 As used in this chapter, unless the context clearly
3 indicates otherwise:

4 1. "*Construction manager-at-risk*" means a sole
5 proprietorship, partnership, corporation, or other legal entity
6 that assumes the risk for the construction, rehabilitation,
7 alteration, or repair of a project and provides consultant
8 services to the government entity in the development and design
9 phases, working collaboratively with the design professionals
10 involved.

11 2. "*General conditions*" means work which will not be
12 incorporated into the completed project. This work includes
13 but is not limited to job site cleaning and temporary
14 structures.

15 3. "*Governmental entity*" means the state, political
16 subdivisions of the state, public school corporations, and all
17 officers, boards, or commissions empowered by law to enter
18 into contracts for the construction of public improvements,
19 including the state board of regents.

20 4. "*Guaranteed maximum price contract*" means the agreed
21 to fixed or guaranteed maximum price pursuant to a contract
22 entered into by the construction manager-at-risk and the
23 governmental entity.

24 5. "*Public improvement*" means as defined in section 26.2.

25 6. "*Repair or maintenance work*" means as defined in section
26 26.2.

27 7. "*Self-perform*" means work that is executed by
28 the construction manager-at-risk without the use of a
29 subcontractor. Electrical, mechanical, fire suppression, and
30 plumbing work may not be self-performed.

31 Sec. 6. NEW SECTION. **26A.2 Authorization.**

32 Notwithstanding any other law to the contrary, a
33 governmental entity shall be authorized to enter into a
34 guaranteed maximum price contract for the construction of a
35 public improvement pursuant to this chapter.

1 Sec. 7. NEW SECTION. **26A.3 Guaranteed maximum price**
2 **contract — process.**

3 1. A governmental entity shall publicly disclose the
4 governmental entity's intent to enter into a guaranteed
5 maximum price contract and the governmental entity's selection
6 criteria at least fourteen days prior to publishing a request
7 for statements of qualifications. Public disclosure shall
8 be in a relevant contractor plan room service with statewide
9 circulation, a relevant construction lead generating service
10 with statewide circulation, and on an internet site sponsored
11 by either a governmental entity or a statewide association that
12 represents the governmental entity.

13 2. The governmental entity shall select or designate an
14 engineer licensed under chapter 542B, a landscape architect
15 licensed under chapter 544B, or an architect licensed
16 under chapter 544A by utilizing a quality-based selection
17 process. Fee-based selection of the engineer, landscape
18 architect, or architect shall be prohibited. The engineer,
19 landscape architect, or architect selected or designated by
20 the government entity under this subsection shall have the
21 responsibility of preparing construction documents for the
22 project and shall review the construction for conformance with
23 design intent.

24 3. *a.* (1) The governmental entity shall prepare a request
25 for statements of qualifications. The request shall include
26 general information on the project site, project scope,
27 schedule, selection criteria, and the time and place for
28 receipt of statements of qualifications. Selection criteria
29 and general information included in the request for statements
30 of qualifications may be developed in coordination with
31 the engineer, landscape architect, or architect selected or
32 designated by the governmental entity as provided under this
33 section.

34 (2) Selection criteria may include the contractor's
35 experience undertaking projects of similar size and scope

1 in either the public or private sector, past performance,
2 safety record, proposed personnel, and proposed methodology.
3 Selection criteria shall include experience in both the public
4 and the private sector. Selection criteria shall not include
5 specific delivery methods, including guaranteed maximum price
6 projects. In addition, selection criteria shall not include
7 training, testing, or other certifications that may only
8 be obtained through organized labor affiliations or other
9 limited-membership organizations.

10 (3) A request for statements of qualifications under this
11 subsection shall be subject to the requirements of section
12 73A.28. In addition, a governmental entity shall not by
13 ordinance, rule, or any other action relating to the request
14 for qualifications stipulate criteria that would directly
15 or indirectly restrict the selection of a construction
16 manager-at-risk to any predetermined class of providers based
17 on labor organization affiliation or any other criteria other
18 than that allowed pursuant to this paragraph.

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

1 the governmental entity.

2 *c.* The governmental entity shall receive, publicly open, and
3 read aloud the names of the contractors submitting statements
4 of qualifications. Within forty-five days after the date of
5 opening the statements of qualifications submissions, the
6 governmental entity shall evaluate each proposal or statement
7 of qualifications submission in relation to the criteria set
8 forth in the request.

9 4. *a.* After considering the statements of qualifications,
10 the governmental entity shall issue a request for proposals
11 to each contractor who meets the qualifications which shall
12 include selection and evaluation criteria. Each contractor
13 issued a request for proposals shall be permitted to submit
14 a proposal and each proposal submitted shall include the
15 construction manager-at-risk's proposed fees. The request
16 for proposals shall be subject to the requirements of section
17 73A.28 and the same limitations applied to selection criteria
18 for the request for statements of qualifications in this
19 chapter.

20 *b.* The governmental entity shall receive, publicly open, and
21 read aloud the names of the contractors submitting proposals.
22 Within forty-five days after the date of opening the proposals,
23 the governmental entity shall evaluate and rank each proposal
24 in relation to the criteria set forth in the applicable
25 request.

26 *c.* The governmental entity or its representative shall
27 select the construction manager-at-risk that submits the
28 proposal that offers the best value for the governmental
29 entity based on the published selection criteria and on
30 its ranking evaluation. The governmental entity shall
31 first attempt to negotiate a contract with the selected
32 construction manager-at-risk. If the governmental entity
33 is unable to negotiate a satisfactory contract with the
34 selected construction manager-at-risk, the governmental entity
35 shall, formally and in writing, end negotiations with that

1 construction manager-at-risk and proceed to negotiate with the
2 next construction manager-at-risk in the order of the selection
3 ranking until a contract is reached or negotiations with all
4 ranked construction managers-at-risk end.

5 *d.* The governmental entity shall make available to the
6 public the final scoring and ranking evaluation of the request
7 for proposals received.

8 5. *a.* If the estimated total cost of trade contract work
9 and materials packages is in excess of the adjusted competitive
10 bid threshold established in section 314.1B, the construction
11 manager-at-risk shall advertise for competitive bids, receive
12 bids, prepare bid analyses, and award contracts to qualified
13 firms on trade contract work and materials packages in
14 accordance with all of the following:

15 (1) The construction manager-at-risk shall prepare a
16 request for statements of qualifications. The request shall
17 include general information on the project site, project
18 scope, schedule, selection criteria, and the time and place
19 for receipt of statements of qualifications. The construction
20 manager-at-risk shall provide public notice of the request for
21 statements of qualifications in a relevant contractor plan room
22 service with statewide circulation, a relevant construction
23 lead generating service with statewide circulation, and on an
24 internet site sponsored by either a governmental entity or a
25 statewide association that represents the governmental entity.
26 The request for statements of qualifications shall be posted
27 not less than thirteen and not more than forty-five days before
28 the date for response.

29 (2) (a) The construction manager-at-risk shall utilize
30 objective prequalification criteria in the request for
31 statements of qualifications. All firms who meet the
32 objective prequalification criteria as a qualified firm
33 shall be allowed to submit a bid for the relevant trade
34 contract work and materials package. Upon determining which
35 firms meet the prequalification criteria, the construction

1 manager-at-risk shall notify all firms who responded to the
2 request for qualifications whether they successfully meet the
3 prequalification criteria. The notification shall include a
4 list of all firms who were deemed to have successfully met the
5 prequalification criteria. Notification shall be given no
6 less than fifteen days prior to the subcontractor bids being
7 due. Subcontractors who failed to meet the prequalification
8 standards shall also be provided with information regarding
9 which prequalification criteria were not met. In addition,
10 a firm that is prequalified with the state department of
11 transportation pursuant to section 314.1 shall be considered
12 to meet the objective prequalification criteria as a qualified
13 firm and shall be allowed to submit a bid for purposes of work
14 related to parking lots, streets, site development, or bridge
15 structure components.

16 (b) Prequalification criteria shall be limited to a
17 firm's experience as a contractor, capacity of key personnel,
18 technical competence, capability to perform, the past
19 performance of the firm and the firm's employees to include
20 the firm's safety record and compliance with state and federal
21 law, and availability to and familiarity with the location of
22 the project subject to bid. Prequalification criteria shall
23 be reasonably and materially related to the relevant trade
24 contract work and materials package. The prequalification
25 criteria shall not include training, testing, or other
26 certifications that may only be obtained through organized
27 labor affiliated organizations or other limited-membership
28 organizations.

29 (3) The governmental entity and the construction
30 manager-at-risk shall participate in the bid review and
31 evaluation process. The governmental entity and the
32 construction manager-at-risk shall open, announce the name
33 of the contractor submitting a bid, and file all proposals
34 received, at the time and place specified in the notice to
35 bidders. After the bids have been opened, reviewed, and

1 tabulated, the contracts shall be awarded to the lowest
2 responsive, responsible bidder. All awards and bids shall be
3 made available to the public.

4 (4) Notwithstanding any other provisions of this paragraph
5 to the contrary, the construction manager-at-risk may
6 self-perform work for a trade package that is below the
7 adjusted competitive bid threshold established in section
8 314.1B. If a trade package is in excess of the adjusted
9 competitive bid threshold established in section 314.1B, the
10 construction manager-at-risk shall notify the governmental
11 entity in writing of its intent to submit a bid proposal for
12 a trade package. In submission of a bid, the construction
13 manager-at-risk shall comply with the requirements of this
14 paragraph. The governmental entity shall receive the bids,
15 participate in, and provide oversight of all bid analyses
16 pertinent to the award of subcontracts or rejection of bids on
17 any trade package for which the construction manager-at-risk
18 submits a bid to self-perform. Where the construction
19 manager-at-risk is not the apparent low bidder, the government
20 shall be responsible for determining whether a recommendation
21 of award to the construction manager-at-risk is in the best
22 interests of the project. A construction manager-at-risk shall
23 not be required to comply with bidding requirements for general
24 conditions as provided in the contract with the governmental
25 entity. If the construction manager-at-risk self-performs
26 the construction work, it shall adhere to any agreement it
27 may have with one or more labor organizations. However, the
28 construction manager-at-risk shall not be obligated to adhere
29 to any terms and conditions of any labor agreement with one or
30 more labor organizations for those trade contracts that are
31 not self-performed by the construction manager-at-risk for the
32 public improvement, and such terms shall be deemed void and
33 unenforceable.

34 b. If a selected trade contractor materially defaults in
35 the performance of its work or fails to execute a contract,

1 the construction manager-at-risk may, without advertising,
2 fulfill the contract requirements or select a replacement trade
3 contractor to fulfill the contract requirements.

4 Sec. 8. NEW SECTION. **26A.4 Prohibited contracts.**

5 1. Notwithstanding any other provision of law to the
6 contrary, a governmental entity shall not be authorized
7 to enter into a design-build contract for the construction
8 of a public improvement. For purposes of this subsection,
9 "*design-build contract*" means a single contract providing for
10 both design services and construction services that may include
11 maintenance, operations, preconstruction, and other related
12 services.

13 2. A governmental entity shall not be authorized to
14 enter into a guaranteed maximum price contract for public
15 improvements relating to highway, bridge, or culvert
16 construction.

17 EXPLANATION

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

20 This bill concerns public construction and improvement
21 contracts.

22 DIVISION I — PUBLIC CONSTRUCTION BIDDING REQUIREMENTS.

23 Code section 26.4, relating to architectural and engineering
24 services, is amended to prohibit fee-based selection of an
25 architect, landscape architect, or engineer for a public
26 improvement.

27 Code section 262.34 is amended to prohibit the state board
28 of regents from entering into a design-build contract to
29 construct, repair, or improve buildings or grounds. This
30 provision takes effect upon enactment. However, the provision
31 does not apply if an architect entered into a design-build
32 contract with the state board of regents prior to the effective
33 date of the provision.

34 DIVISION II — GUARANTEED MAXIMUM PRICE CONTRACTS. This
35 division allows a governmental entity to use a guaranteed

1 maximum price contract for purposes of public improvement
2 contracts.

3 New Code section 26A.1 defines, among other terms,
4 "construction manager-at-risk", "governmental entity",
5 "guaranteed maximum price contract" and "public improvement".
6 "Guaranteed maximum price contract" is defined to mean the
7 agreed to fixed or guaranteed maximum price pursuant to a
8 contract entered into by the construction manager-at-risk and
9 the governmental entity. "Construction manager-at-risk" means
10 a legal entity that assumes the risk for the construction,
11 rehabilitation, alteration, or repair of a project and
12 provides consultant services to the governmental entity in the
13 development and design phases, working collaboratively with
14 the design professionals involved. "Governmental entity" is
15 defined to mean the state, political subdivisions of the state,
16 and public school corporations, and is specifically defined to
17 include the state board of regents. "Public improvement" is
18 defined to mean the same as for purposes of Code chapter 26
19 governing public construction bidding.

20 New Code section 26A.2 authorizes a governmental entity to
21 enter into a guaranteed maximum price contract for a public
22 improvement, notwithstanding any provision of law to the
23 contrary.

24 New Code section 26A.3 establishes the process for entering
25 into a guaranteed maximum price contract. The new Code section
26 provides procedures governing public disclosure of an intent to
27 enter into a guaranteed maximum price contract, selection of
28 an engineer, landscape architect, or architect, a request for
29 qualifications process, a request for proposals and selection
30 process, and selection of trade contractors and material
31 packages.

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

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1 construction.