

House Study Bill 648 - Introduced

HOUSE FILE _____

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

A BILL FOR

1 An Act relating to public construction bidding.

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

1 Section 1. Section 26.2, Code 2022, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 01. "*Construction manager*" means a sole
4 proprietorship, partnership, corporation, or other legal
5 entity that acts as a consultant to a governmental entity
6 in the development, design, or construction phase of a
7 public improvement that has not been retained as a design
8 professional.

9 Sec. 2. Section 26.2, subsection 2, Code 2022, is amended
10 to read as follows:

11 2. "*Governmental entity*" means the state, political
12 subdivisions of the state, public school corporations, and all
13 officers, boards, or commissions empowered by law to enter
14 into contracts for the construction of public improvements,
15 excluding ~~the state board of regents and the state department~~
16 of transportation.

17 Sec. 3. Section 26.4, Code 2022, is amended to read as
18 follows:

19 **26.4 ~~Exemptions from competitive~~ Competitive bids and**
20 **quotations — applicability.**

21 1. Architectural, landscape architectural, or engineering
22 design services procured for a public improvement are not
23 subject to [sections 26.3](#) and [26.14](#).

24 2. A construction manager is subject to sections 26.3
25 and 26.14 and services provided by a construction manager
26 must be competitively bid as part of a contract for a public
27 improvement.

28 Sec. 4. Section 26.7, Code 2022, is amended by adding the
29 following new subsection:

30 NEW SUBSECTION. 4. The notice to bidders may require the
31 bidder to file with the governmental entity a statement showing
32 the bidder's financial standing, equipment, and experience in
33 the execution of like or similar work.

34 Sec. 5. Section 26.9, Code 2022, is amended by adding the
35 following new subsection:

1 NEW SUBSECTION. 3. Notwithstanding subsection 1, a
2 governmental entity may reject a bid if the governmental entity
3 determines that the bidder has not performed in accordance with
4 the terms of another contract for a public improvement awarded
5 by a governmental entity to the bidder. Prior to rejecting
6 a bid, the governmental entity must make a specific finding
7 on the bidder's nonperformance and provide the bidder with
8 the opportunity to respond to the alleged nonperformance at a
9 public hearing.

10 Sec. 6. NEW SECTION. 26.21 **Alternative project delivery**
11 **contracts.**

12 1. As used in this section, unless the context otherwise
13 requires:

14 *a. "Alternative project delivery contract"* means a
15 design-build contract subject to the requirements of this
16 section.

17 *b. "Best value"* means the highest overall value to the
18 governmental entity-based factors that are limited to price,
19 quality, design, technical solutions, past performance, and
20 workmanship.

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

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

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

1 sought.

2 *d. "Design-build"* means a project delivery method subject
3 to a two-phase, best-value, or low-bid design-build selection
4 process for which the design and construction services are
5 furnished under one contract.

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

15 *f. "Design-build project"* means the design, construction,
16 alteration, addition, remodeling, or improvement of any
17 buildings, infrastructure, or facilities under contract with a
18 governmental entity. *"Design-build project"* does not include a
19 project for the construction, reconstruction, or improvement of
20 a highway, bridge, or culvert.

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

33 *h. "Design bridging criteria package"* means the
34 performance-oriented program, scope, design, and performance
35 specifications for a design-build project sufficient to permit

1 a design-builder to prepare a response to a governmental
2 entity's request for proposals for a design-build project.

3 *i. "Low-bid design-build selection process"* means the process
4 used by a governmental entity seeking to enter a design-build
5 contract as outlined in subsection 8, paragraph "b".

6 *j. "Low-bid design-build threshold"* means the greater of
7 five million dollars or the adjusted low-bid cost threshold
8 established in section 314.1B.

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

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

20 *n. "Two-phase, best-value selection process"* means the
21 process used by a governmental entity seeking to enter a
22 design-build contract as outlined in subsection 8, paragraph
23 "a".

24 *o. "Two-phase, best-value threshold"* means the greater of
25 twenty-five million dollars or the adjusted best-value cost
26 threshold established in section 314.1B.

27 2. Notwithstanding any other law to the contrary, a
28 governmental entity shall be authorized to enter into an
29 alternative project delivery contract for a public improvement
30 subject to the requirements of this section.

31 3. In soliciting proposals for a design-build contract,
32 a governmental 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 4. a. A bridging criteria professional may be retained
2 by the governmental entity as the governmental entity's
3 representative to advise the governmental entity on
4 design-build matters. The retention of the bridging criteria
5 professional shall be exclusively to guide and administer
6 the governmental entity's interests through the process.
7 The bridging criteria professional shall have demonstrated
8 sufficient previous experience in rules and procedures
9 specific to the design-build process. The bridging criteria
10 professional shall, along with the governmental entity, be
11 authorized to make recommendations or influence the acceptance
12 of any material, process, or procedure used during the design
13 and construction processes in accordance with the criteria
14 established for the project for the purpose of evaluating
15 compliance of the work. The bridging criteria professional
16 may be employed or contracted by the governmental entity to
17 act on behalf of the governmental entity for the sole purpose
18 of administrative procedures and shall not be connected in
19 any means to a design-build team responding to the request
20 for proposal. The duration of bridging criteria professional
21 services, prior to the issuance of a design-build contract,
22 may begin when establishing the governmental entity's program
23 requirements through design development if the complexity of
24 the project with the governmental entity merits this level of
25 bridging information.

26 b. (1) The design bridging criteria package shall include
27 preliminary designs for the project.

28 (2) Longevity of materials and system performance
29 requirements shall be identified in the design bridging
30 criteria package to identify materials and systems that have
31 the potential to exceed the length of time the project is
32 funded.

33 (3) The design bridging criteria package shall also include
34 preliminary civil and landscape drawings including outline
35 specification showing technical site engineering and storm

1 water detention, topographic survey and existing conditions
2 information, and preliminary geotechnical and environmental
3 reports; tabular and architectural drawings of program elements
4 indicating the room types, sizes, and typical furnishings
5 to include desired building room adjacencies and functional
6 organizational requirements; any electrical, mechanical,
7 structural, plumbing, heating, ventilating, air conditioning,
8 fire protection, life safety, or security systems serving
9 the building, to include outline specifications with project
10 description including general description of systems and
11 finishes; schematic level code review summary; and local
12 permitting requirements.

13 (4) The design bridging criteria package may extend
14 to the schematic design level of detail, including design
15 expectations, capacity, durability, standards, ingress
16 and egress requirements, international building code
17 considerations, performance requirements, the governmental
18 entity's operational expectations, requirements for interior
19 and exterior spaces, material and building system quality
20 standards, and design and construction schedule timelines.
21 However, if the low-bid design-build selection process is used,
22 the design bridging criteria package shall be extended to
23 include the provisions described in this subparagraph.

24 5. A governmental entity shall publicly disclose its intent
25 to solicit proposals for a design-build contract and its
26 project design bridging criteria package in the same manner
27 that it would post notice for the competitive bidding process
28 in section 26.3.

29 6. In soliciting proposals for a design-build contract,
30 a governmental entity shall establish in the request for
31 proposals a time, place, and other specific instructions for
32 the receipt of proposals. Proposals not submitted in strict
33 accordance with the instructions may be subject to rejection.
34 Minor irregularities may be waived by the governmental entity.

35 7. A request for proposals shall be prepared for each

1 design-build contract and shall contain, at minimum, the
2 following elements:

3 *a.* The procedures to be followed for submitting proposals,
4 the criteria for evaluating proposals and their relative
5 weight, and the procedure for making awards.

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

8 *c.* The design bridging criteria package.

9 *d.* A description of the drawings, specifications, or other
10 information to be submitted with the proposal, with guidance
11 as to the form and level of completeness of the drawings,
12 specifications, or other information that will be acceptable.

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

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

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

18 *h.* If using a two-phase, best-value selection process,
19 the amount of the stipend that will be available and that
20 responsive bidders shall submit a technical proposal and a
21 sealed price proposal.

22 *i.* If using a low-bid design-build selection process, scope
23 of work, plans, and specifications, the required bid form, the
24 contract completion date or construction days, a design-build
25 evaluation plan identifying the evaluation criteria along with
26 corresponding standards, a description of what constitutes a
27 nonresponsive proposal, and a provision that responsive bidders
28 must submit their design-build technical and sealed price
29 proposals simultaneously.

30 *j.* Any other information that the governmental entity
31 chooses to request limited to surveys, soil reports, drawings
32 of existing structures, environmental studies, photographs, a
33 firm's experience as a contractor inclusive of projects in all
34 delivery methods, references to public records, or affirmative
35 action and minority business enterprise requirements consistent

1 with state and federal law.

2 8. A governmental entity seeking to enter into a
3 design-build contract shall solicit design-build proposals
4 either by using a two-phase, best-value, or a low-bid
5 design-build selection process subject to the requirements
6 of this chapter. A two-phase, best-value selection process
7 may be used only if the estimated total cost of the public
8 improvement exceeds the two-phase, best-value threshold. The
9 low-bid design-build selection process may be used only if the
10 estimated total cost of the public improvement exceeds the
11 low-bid design-build threshold.

12 a. When solicitations require a two-phase, best-value
13 selection process, the selection process shall be conducted and
14 a design-build contract awarded as follows:

15 (1) In phase one, the governmental entity or bridging
16 criteria professional on behalf of the governmental entity
17 shall score the technical proposals using the selection
18 criteria in the request for proposals. The governmental entity
19 or bridging criteria professional shall then submit a technical
20 proposal score for each design-builder. The governmental
21 entity or bridging criteria professional shall reject any
22 proposal it deems nonresponsive.

23 (2) In phase two, the governmental entity shall announce
24 the technical proposal score for each design-builder and
25 shall publicly open the sealed price proposals for each
26 design-builder and shall determine an adjusted score for each
27 proposal as follows:

28 (a) If a time factor is not included with the selection
29 criteria in the requests for proposals, the governmental
30 entity shall obtain the adjusted score by dividing each
31 design-builder's price by the technical score that the
32 governmental entity or bridging criteria professional has given
33 to that design-builder.

34 (b) If a time factor is included with the selection criteria
35 in the requests for proposals, the governmental entity may

1 adjust the design-builder's price using a value of the time
2 factor established by the governmental entity. The value of
3 the time factor must be expressed as a value per day. The
4 adjustment must be based on the total time value which is the
5 design-builder's total number of days to complete the project
6 multiplied by the time factor. The time-adjusted price is the
7 total time value plus the bid amount. This adjustment shall
8 only be used for selection purposes and must not affect the
9 governmental entity's liquidated damages schedule or incentive
10 or disincentive program. An adjusted score will then be
11 obtained by dividing each design-builder's time-adjusted price
12 by the technical score that the governmental entity or bridging
13 criteria professional has given the design-builder.

14 (3) Unless all proposals are rejected, the governmental
15 entity shall award the contract to the responsive and
16 responsible design-builder with the lowest adjusted score as
17 determined pursuant to this paragraph. The governmental entity
18 shall reserve the right to reject all proposals.

19 (4) As an inducement to qualified design-builders, the
20 governmental entity shall pay a stipend, the amount of which
21 shall be established in the request for proposals, to each
22 design-builder who submitted a proposal but was not accepted.
23 Such stipend shall be no less than one-half of one percent
24 of the total project budget. Upon payment of the stipend to
25 such a design-builder, the governmental entity shall acquire
26 a nonexclusive right to use the design submitted by the
27 design-builder, and the design-builder shall have no further
28 liability for the use of the design by the governmental entity
29 in any manner. If the design-builder desires to retain all
30 rights and interests in the design proposed, the design-builder
31 shall forfeit the stipend.

32 *b.* When solicitations require a low-bid design-build
33 selection process, the selection process shall be conducted and
34 a design-build contract awarded as follows:

35 (1) The governmental entity shall develop evaluation

1 criteria based on the goals and risks identified for the
2 project. The criteria shall be evaluated on either a scored
3 or a pass or fail basis. To the extent possible, evaluation
4 criteria should have a measurable standard against which
5 responsiveness will be measured on a pass or fail basis.

6 (2) The governmental entity shall first review technical
7 proposals to determine which proposals are responsive to
8 the evaluation criteria in the request for proposals. All
9 responsive proposals meeting the minimum standards shall
10 advance to opening the price proposals. Design-build bidders
11 not meeting the minimum standards shall have their sealed price
12 proposals returned.

13 (3) Following review and evaluation of the technical
14 proposal, the governmental entity shall then open and
15 review the price proposals from the responsive bidders. The
16 governmental entity shall award the contract to the bidder that
17 submits a responsive proposal with the lowest price, if the
18 proposal meets or exceeds all material request for proposals
19 requirements as determined by the governmental entity. To be
20 responsive, the technical proposal must meet or exceed the
21 requirements specified in the request for proposals.

22 9. A governmental entity or the state department of
23 transportation shall not be authorized to enter into an
24 alternative project delivery contract for projects relating to
25 highway, bridge, or culvert construction.

26 Sec. 7. Section 262.56, Code 2022, is amended to read as
27 follows:

28 **262.56 Authorization — contracts — title.**

29 Subject to and in accordance with the provisions of this
30 subchapter the state board of regents is hereby authorized
31 to undertake and carry out any project as defined in section
32 262.55 at the state university of Iowa, Iowa state university
33 of science and technology, and the university of northern
34 Iowa and to operate, control, maintain and manage student
35 residence halls and dormitories, including dining and other

1 incidental facilities, and additions to such buildings at each
2 of said institutions. All contracts for the construction,
3 reconstruction, completion, equipment, improvement, repair or
4 remodeling of any buildings, additions or facilities shall be
5 let in accordance with the provisions of [section 262-34 26.3](#).
6 The title to all real estate acquired under the provisions of
7 this subchapter and the improvements erected thereon shall be
8 taken and held in the name of the state of Iowa. The board
9 is authorized to rent the rooms in such residence halls and
10 dormitories to the students, officers, guests and employees
11 of said institutions at such rates, fees or rentals as will
12 provide a reasonable return upon the investment, but which will
13 in any event produce net rents, profits and income sufficient
14 to insure the payment of the principal of and interest on all
15 bonds or notes issued to pay any part of the cost of any project
16 and refunding bonds or notes issued pursuant to the provisions
17 of [this subchapter](#).

18 Sec. 8. Section 262A.4, Code 2022, is amended to read as
19 follows:

20 **262A.4 Authorization of general assembly and governor.**

21 Subject to and in accordance with the provisions of this
22 chapter, the state board of regents after authorization by a
23 constitutional majority of each house of the general assembly
24 and approval by the governor may undertake and carry out any
25 project as defined in [this chapter](#) at the institutions now or
26 hereafter under the jurisdiction of the board. The state board
27 of regents is authorized to operate, control, maintain, and
28 manage buildings and facilities and additions to such buildings
29 and facilities at each of said institutions. All contracts
30 for the construction, reconstruction, completion, equipment,
31 improvement, repair or remodeling of any buildings, additions,
32 or facilities shall be let in accordance with the provisions
33 of [section 262-34 26.3](#). The title to all real estate acquired
34 under the provisions of [this chapter](#) and the improvements
35 erected thereon shall be taken and held in the name of the

1 state of Iowa.

2 Sec. 9. Section 263A.2, Code 2022, is amended to read as
3 follows:

4 **263A.2 Authorization of general assembly and governor.**

5 Subject to and in accordance with the provisions of this
6 chapter, the state board of regents may undertake and carry out
7 any project as defined in [this chapter](#) at the state university
8 of Iowa. The state board of regents is authorized to operate,
9 control, maintain, and manage buildings and facilities and
10 additions to such buildings and facilities at said institution.
11 All contracts for the construction, reconstruction, completion,
12 equipment, improvement, repair, or remodeling of any buildings,
13 additions, or facilities shall be let in accordance with the
14 provisions of [section ~~262.34~~ 26.3](#). The title to all real
15 estate acquired under the provisions of [this chapter](#) and the
16 improvements erected thereon shall be taken and held in the
17 name of the state of Iowa.

18 Sec. 10. Section 314.1, subsection 2, Code 2022, is amended
19 to read as follows:

20 2. Notwithstanding any other provision of law to the
21 contrary, a public improvement that involves the construction,
22 reconstruction, or improvement of a highway, bridge, or culvert
23 and that has a cost in excess of the applicable threshold
24 in [section 73A.18, ~~262.34~~, 297.7, 309.40, 310.14, or 313.10](#),
25 as modified by the bid threshold subcommittee pursuant to
26 section 314.1B, shall be advertised and let for bid, except
27 such public improvements that involve emergency work pursuant
28 to [section 309.40A, 313.10, or 384.103, subsection 2](#). For a
29 city having a population of fifty thousand or less, a public
30 improvement that involves the construction, reconstruction, or
31 improvement of a highway, bridge, or culvert that has a cost
32 in excess of twenty-five thousand dollars, as modified by the
33 bid threshold subcommittee pursuant to [section 314.1B](#), shall be
34 advertised and let for bid, excluding emergency work. However,
35 a public improvement that has an estimated total cost to a

1 city in excess of a threshold of fifty thousand dollars, as
2 modified by the bid threshold subcommittee pursuant to section
3 314.1B, and that involves the construction, reconstruction, or
4 improvement of a highway, bridge, or culvert that is under the
5 jurisdiction of a city with a population of more than fifty
6 thousand, shall be advertised and let for bid. Cities required
7 to competitively bid highway, bridge, or culvert work shall
8 do so in compliance with the contract letting procedures of
9 sections 26.3 through 26.12.

10 Sec. 11. Section 314.1B, subsection 2, Code 2022, is amended
11 by adding the following new paragraph:

12 NEW PARAGRAPH. *f.* Beginning July 1, 2023, the subcommittee
13 shall make adjustments to the low-bid design-build threshold
14 as defined in section 26.21 and the two-phase, best-value
15 threshold as defined in section 26.21 for vertical
16 infrastructure in accordance with the methodology of paragraph
17 "b".

18 Sec. 12. REPEAL. Section 262.34, Code 2022, is repealed.

19 EXPLANATION

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

22 This bill concerns public construction bidding procedures
23 for public improvements.

24 The bill provides that services provided by a construction
25 manager, defined as a legal entity that is not a design
26 professional but acts as a consultant to a governmental entity
27 for a public improvement, is subject to the competitive bid
28 requirements of Code chapter 26.

29 The bill amends the definition of governmental entity for
30 purposes of the provisions of Code chapter 26 governing public
31 construction bidding to include the state board of regents.
32 Code section 262.34, providing alternative bidding procedures
33 for state board of regents public improvements, is repealed.

34 Code section 26.7, regarding notice to bidders, is amended
35 to provide that the notice may require bidders to file a

1 statement with the governmental entity showing the bidder's
2 financial standing, equipment, and experience in similar work.

3 Code section 26.9, regarding award of contract, is amended
4 to allow a governmental entity to reject a bid if the bidder
5 has not performed in accordance with the terms of another
6 contract for a public improvement.

7 New Code section 26.21 allows a governmental entity to use
8 an alternative project delivery contract in circumstances that
9 normally require the governmental entity to use competitive
10 bidding procedures. Currently, most governmental entities must
11 use a competitive bidding process as outlined in Code chapter
12 26 for a public improvement construction project.

13 The bill defines an alternative project delivery contract
14 as a design-build contract and allows for the selection and
15 awarding of a design-build contract under either a two-phase,
16 best-value, or low-bid design-build selection process. The
17 bill defines a design-build contract as a contract between
18 a governmental entity and a design-builder to furnish the
19 architecture of record, engineering of record, and related
20 services as required for a given public project, and to furnish
21 the labor, materials, and other construction services for the
22 same public project. The bill specifies that the two-phase,
23 best-value selection process may be used only for public
24 improvements with an estimated total cost greater than \$25
25 million or the adjusted threshold amount as provided in Code
26 section 314.1B. The bill provides that the low-bid selection
27 process may be used for public improvements with an estimated
28 total cost greater than \$5 million or the adjusted threshold
29 amount as provided in Code section 314.1B. Code section
30 314.1B is amended to provide the mechanism for adjusting these
31 threshold amounts.

32 Under both design-build contract processes, a governmental
33 entity may retain a bridging criteria professional to advise
34 the governmental entity on design-build matters. The bill
35 specifies what information shall be included in a request for

1 proposals for a design-build contract, to include a design
2 bridging criteria package detailing necessary elements for the
3 public improvement.

4 If the two-phase, best-value process is used, the
5 governmental entity shall first score the technical proposals
6 submitted by design-builders. Then, the governmental
7 entity shall examine the sealed price proposals for each
8 design-builder and calculate an adjusted score by dividing
9 each design-builder's price by that design-builder's technical
10 score. The bill provides a mechanism to adjust the sealed
11 price submitted by a design-builder if a time factor is
12 included in the selection criteria. The bill then provides
13 that unless all proposals are rejected, the governmental entity
14 shall award the contract to the responsive and responsible
15 design-builder with the lowest adjusted score. The bill
16 allows the governmental entity to provide a stipend to each
17 design-builder who submitted a proposal but was not awarded the
18 contract.

19 If the low-bid design-build selection process is used,
20 design-builders shall simultaneously submit their technical
21 and sealed price proposals. The bill provides that the
22 governmental entity shall establish measurable evaluation
23 criteria for the project. The governmental entity shall first
24 review the technical proposal to determine whether the proposal
25 meets the minimum standards established through the evaluation
26 criteria. Following review and evaluation of the technical
27 proposal, the governmental entity shall only review the price
28 proposals from bidders that meet the minimum requirements for
29 the project and award the contract to the bidder that submits a
30 proposal that meets or exceeds the evaluation criteria with the
31 lowest price.

32 The bill provides that an alternative project delivery
33 contract shall not be authorized for projects relating to
34 highway, bridge, or culvert construction.