

House File 564 - Introduced

HOUSE FILE 564
BY BARKER and GOSA

A BILL FOR

- 1 An Act relating to contracts for the construction of public
- 2 improvements.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 26.9, Code 2025, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 3. A governmental entity may reject the
4 lowest responsive bidder based on the bidder's experience,
5 number of employees, and ability to finance the cost of the
6 public improvement. When rejecting the lowest responsive bidder,
7 a governmental entity shall state with specificity the basis
8 of the rejection. The lowest responsive bidder shall have
9 standing to maintain an action for an injunction, mandamus,
10 or declaratory relief challenging the governmental entity's
11 actions as fraudulent, arbitrary, in bad faith, or an abuse of
12 discretion.

13 Sec. 2. Section 26A.2, Code 2025, is amended to read as
14 follows:

15 **26A.2 Authorization.**

16 Notwithstanding any other law to the contrary, a governmental
17 entity shall be authorized to enter into a guaranteed maximum
18 price contract for the construction of a public improvement
19 pursuant to this chapter if the estimated cost of the project
20 exceeds one hundred fifty million dollars.

21 Sec. 3. Section 26A.3, subsection 4, paragraphs a and c, Code
22 2025, are amended to read as follows:

23 a. After considering the statements of qualifications, the
24 governmental entity shall issue a request for proposals to
25 each contractor who meets the qualifications, which shall
26 include selection and evaluation criteria. Each contractor
27 issued a request for proposals shall be permitted to submit
28 a proposal and each proposal submitted shall include the
29 construction manager-at-risk's proposed fees and costs, including
30 the proposed costs for general conditions. The construction
31 manager-at-risk's proposed fees and costs shall not contain any
32 form of contingency. The request for proposals shall be subject
33 to the requirements of section 73A.28 and the same limitations
34 applied to selection criteria for the request for statements of
35 qualifications in this chapter.

1 c. The governmental entity or its representative shall
2 select the construction manager-at-risk that submits the
3 proposal that offers the ~~best value~~ lowest cost for the
4 governmental entity based on the published selection criteria
5 and on its ranking evaluation. The governmental entity
6 shall first attempt to negotiate a contract with the selected
7 construction manager-at-risk. If the governmental entity
8 is unable to negotiate a satisfactory contract with the
9 selected construction manager-at-risk, the governmental entity
10 shall, formally and in writing, end negotiations with that
11 construction manager-at-risk and proceed to negotiate with the
12 next construction manager-at-risk in the order of the selection
13 ranking until a contract is reached or negotiations with all
14 ranked construction managers-at-risk end. A governmental entity
15 may reject the lowest cost construction manager-at-risk based
16 on the construction manager-at-risk's experience, number of
17 employees, and ability to finance the cost of the public
18 improvement. When rejecting the lowest cost construction
19 manager-at-risk, a governmental entity shall state with
20 specificity the basis of the rejection. The lowest cost
21 construction manager-at-risk shall have standing to maintain
22 an action for an injunction, mandamus, or declaratory relief
23 challenging the governmental entity's actions as fraudulent,
24 arbitrary, in bad faith, or an abuse of discretion.

25 Sec. 4. Section 26A.3, subsection 5, paragraph a, unnumbered
26 paragraph 1, Code 2025, is amended to read as follows:

27 If the estimated total cost of trade contract work and
28 materials packages is in excess of the adjusted competitive
29 bid threshold established in section 314.1B, the construction
30 manager-at-risk shall direct the designated licensed engineer,
31 architect, or landscape architect to prepare plans and
32 specifications and make the plans and specifications available.
33 The construction manager-at-risk shall advertise for competitive
34 bids, receive bids, prepare bid analyses, and award contracts to
35 qualified firms on trade contract work and materials packages in

1 accordance with all of the following:

2 Sec. 5. Section 26A.3, subsection 5, paragraph a,
3 subparagraphs (3) and (4), Code 2025, are amended to read as
4 follows:

5 (3) The governmental entity and the construction
6 manager-at-risk shall participate in the bid review and
7 evaluation process. The governmental entity and the construction
8 manager-at-risk shall open, announce the name of the contractor
9 submitting a bid, and file all proposals received, at the
10 time and place specified in the notice to bidders. All bids
11 containing contingent amounts shall be rejected. After the bids
12 have been opened, reviewed, and tabulated, the contracts shall be
13 awarded to the lowest responsive, responsible bidder. All awards
14 and bids shall be made available to the public.

15 (4) Notwithstanding any other provisions of this paragraph to
16 the contrary, the construction manager-at-risk may self-perform
17 work for a trade package that is below the adjusted
18 competitive bid threshold established in section 314.1B. If
19 a trade package is in excess of the adjusted competitive
20 bid threshold established in section 314.1B, the construction
21 manager-at-risk shall notify the governmental entity in writing
22 of its intent to submit a bid proposal for a trade package.
23 In submission of a bid, the construction manager-at-risk
24 shall comply with the requirements of this paragraph. The
25 governmental entity shall receive the bids, participate in, and
26 provide oversight of all bid analyses pertinent to the award
27 of subcontracts or rejection of bids on any trade package
28 for which the construction manager-at-risk submits a bid to
29 self-perform. ~~Where the construction manager-at-risk is not the~~
30 ~~apparent low bidder, the government shall be responsible for~~
31 ~~determining whether a recommendation of award to the construction~~
32 ~~manager-at-risk is in the best interests of the project. A~~
33 construction manager-at-risk shall not be required to comply
34 with bidding requirements for general conditions as provided in
35 the contract with the governmental entity. If the construction

1 manager-at-risk self-performs the construction work, it shall
2 adhere to any agreement it may have with one or more labor
3 organizations. However, the construction manager-at-risk shall
4 not be obligated to adhere to any terms and conditions of any
5 labor agreement with one or more labor organizations for those
6 trade contracts that are not self-performed by the construction
7 manager-at-risk for the public improvement, and such terms shall
8 be deemed void and unenforceable.

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EXPLANATION

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The inclusion of this explanation does not constitute agreement with

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the explanation's substance by the members of the general assembly.

12 This bill relates to contracts for the construction of a
13 public improvement.

14 The bill allows a governmental entity to reject the
15 lowest responsive bidder for the construction of a public
16 improvement under Code chapter 26 or the lowest cost construction
17 manager-at-risk for a guaranteed maximum price contract
18 under Code chapter 26A due to the bidder's or construction
19 manager-at-risk's experience, number of employees, or ability to
20 finance the cost of the public improvement. A rejected bidder
21 or construction manager-at-risk may maintain an action against
22 the governmental entity, challenging the governmental entity's
23 action as fraudulent, arbitrary, in bad faith, or an abuse of
24 discretion.

25 Under current law, a governmental entity is authorized
26 to enter into a guaranteed maximum price contract for the
27 construction of a public improvement. The bill allows a
28 governmental entity to enter into such a contract only if the
29 estimated cost of the project exceeds \$150 million.

30 The bill requires each proposal submitted by a construction
31 manager-at-risk to include the proposed costs for general
32 conditions. The proposed fees and costs may not contain a
33 contingency. A bid containing a contingent amount must be
34 rejected.

35 The bill provides that a governmental entity or representative

1 must select the construction manager-at-risk that submits the
2 lowest cost proposal, based on the published selection criteria
3 and its ranking evaluation, rather than the proposal that offers
4 the best value. The bill strikes a requirement that the
5 governmental entity consider whether awarding a contract to the
6 construction manager-at-risk who was not the apparent lowest
7 bidder is in the best interest of the project.

8 If the estimated cost of trade contract work and materials
9 packages exceeds the adjusted competitive bid threshold, the
10 bill requires the construction manager-at-risk to direct the
11 designated licensed engineer, architect, or landscape architect
12 to prepare and make available plans and specifications for the
13 public improvement project.

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