

Senate Study Bill 1168 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY CHAIRPERSON
BOUSSELOT)

A BILL FOR

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

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1 Section 1. Section 26A.2, Code 2025, is amended to read as
2 follows:

3 **26A.2 Authorization.**

4 Notwithstanding any other law to the contrary, a governmental
5 entity shall be authorized to enter into a guaranteed maximum
6 price contract for the construction of a public improvement
7 pursuant to this chapter if the estimated cost of the project
8 exceeds one hundred fifty million dollars.

9 Sec. 2. Section 26A.3, subsection 4, paragraphs a and c, Code
10 2025, are amended to read as follows:

11 a. After considering the statements of qualifications, the
12 governmental entity shall issue a request for proposals to
13 each contractor who meets the qualifications, which shall
14 include selection and evaluation criteria. Each contractor
15 issued a request for proposals shall be permitted to submit
16 a proposal and each proposal submitted shall include the
17 construction manager-at-risk's proposed fees and costs, including
18 the proposed costs for general conditions. The construction
19 manager-at-risk's proposed fees and costs shall not contain any
20 form of contingency. The request for proposals shall be subject
21 to the requirements of section 73A.28 and the same limitations
22 applied to selection criteria for the request for statements of
23 qualifications in this chapter.

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

1 ranking until a contract is reached or negotiations with all
2 ranked construction managers-at-risk end.

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

5 If the estimated total cost of trade contract work and
6 materials packages is in excess of the adjusted competitive
7 bid threshold established in section 314.1B, the construction
8 manager-at-risk shall direct the designated licensed engineer,
9 architect, or landscape architect to prepare plans and
10 specifications and make the plans and specifications available.
11 The construction manager-at-risk shall advertise for competitive
12 bids, receive bids, prepare bid analyses, and award contracts to
13 qualified firms on trade contract work and materials packages in
14 accordance with all of the following:

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

18 (3) The governmental entity and the construction
19 manager-at-risk shall participate in the bid review and
20 evaluation process. The governmental entity and the construction
21 manager-at-risk shall open, announce the name of the contractor
22 submitting a bid, and file all proposals received, at the
23 time and place specified in the notice to bidders. All bids
24 containing contingent amounts shall be rejected. After the bids
25 have been opened, reviewed, and tabulated, the contracts shall be
26 awarded to the lowest responsive, responsible bidder. All awards
27 and bids shall be made available to the public.

28 (4) Notwithstanding any other provisions of this paragraph to
29 the contrary, the construction manager-at-risk may self-perform
30 work for a trade package that is below the adjusted
31 competitive bid threshold established in section 314.1B. If
32 a trade package is in excess of the adjusted competitive
33 bid threshold established in section 314.1B, the construction
34 manager-at-risk shall notify the governmental entity in writing
35 of its intent to submit a bid proposal for a trade package.

1 In submission of a bid, the construction manager-at-risk
2 shall comply with the requirements of this paragraph. The
3 governmental entity shall receive the bids, participate in, and
4 provide oversight of all bid analyses pertinent to the award
5 of subcontracts or rejection of bids on any trade package
6 for which the construction manager-at-risk submits a bid to
7 self-perform. ~~Where the construction manager-at-risk is not the~~
8 ~~apparent low bidder, the government shall be responsible for~~
9 ~~determining whether a recommendation of award to the construction~~
10 ~~manager-at-risk is in the best interests of the project. A~~
11 construction manager-at-risk shall not be required to comply
12 with bidding requirements for general conditions as provided in
13 the contract with the governmental entity. If the construction
14 manager-at-risk self-performs the construction work, it shall
15 adhere to any agreement it may have with one or more labor
16 organizations. However, the construction manager-at-risk shall
17 not be obligated to adhere to any terms and conditions of any
18 labor agreement with one or more labor organizations for those
19 trade contracts that are not self-performed by the construction
20 manager-at-risk for the public improvement, and such terms shall
21 be deemed void and unenforceable.

22 EXPLANATION

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

25 This bill relates to guaranteed maximum price contracts for
26 the construction of a public improvement.

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

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

1 rejected.

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

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

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