SENATE FILE 2364
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 3153)

(As Amended and Passed by the Senate June 4, 2020)

_____ = New Language by the Senate

ALL New Language by the Senate

A BILL FOR

An Act relating to a construction manager-at-risk commercial construction alternative delivery method and prohibiting certain other alternative delivery methods in the public sector and including effective date and applicability provisions.

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

DIVISION I

PUBLIC CONSTRUCTION BIDDING REQUIREMENTS

Section 1. Section 26.2, subsection 3, paragraph b, subparagraph (5), Code 2020, is amended to read as follows:

(5) Construction or repair or maintenance work performed for a city utility under chapter 388 when such work is performed by its employees or ~~performed for a rural water district under chapter 357A by its employees~~ when such work relates to existing utility infrastructure or establishing connections to existing utility infrastructure. For purposes of this subparagraph, "*utility infrastructure*" includes facilities used for the storage, collection, disposal, treatment, generation, transmission, or distribution of water, sewage, waste, electricity, gas, or telecommunications service.

Sec. 2. Section 26.2, subsection 3, paragraph b, Code 2020, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) Construction or repair or maintenance work performed for a rural water district under chapter 357A by its employees.

Sec. 3. Section 26.4, Code 2020, 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. 4. Section 262.34, Code 2020, 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. 5. 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. 6. 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

Sec. 7. NEW SECTION. **26A.1 Definitions.**

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

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

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

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

including the state board of regents.

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

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

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

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

Sec. 8. NEW SECTION. **26A.2 Authorization.**

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

Sec. 9. NEW SECTION. **26A.3 Guaranteed maximum price contract — process.**

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

2. The governmental entity shall select or designate an engineer licensed under chapter 542B, a landscape architect licensed under chapter 544B, or an architect licensed under chapter 544A by utilizing a quality-based selection process. Fee-based selection of the engineer, landscape architect, or architect shall be prohibited. The engineer,

landscape architect, or architect selected or designated by the government entity under this subsection shall have the responsibility of preparing construction documents for the project and shall review the construction for conformance with design intent.

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

(2) Selection criteria may include the contractor's experience undertaking projects of similar size and scope in either the public or private sector, past performance, safety record, proposed personnel, and proposed methodology. Selection criteria shall include experience in both the public and the private sector. Selection criteria shall not include specific delivery methods, including guaranteed maximum price projects. In addition, selection criteria shall not include training, testing, or other certifications that may only be obtained through organized labor affiliations or other limited-membership organizations.

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

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

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

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

chapter.

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

c. The governmental entity or its representative shall select the construction manager-at-risk that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. The governmental entity shall first attempt to negotiate a contract with the selected construction manager-at-risk. If the governmental entity is unable to negotiate a satisfactory contract with the selected construction manager-at-risk, the governmental entity shall, formally and in writing, end negotiations with that construction manager-at-risk and proceed to negotiate with the next construction manager-at-risk in the order of the selection ranking until a contract is reached or negotiations with all ranked construction managers-at-risk end.

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

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

(1) The construction manager-at-risk shall prepare a request for statements of qualifications. The request shall include general information on the project site, project scope, schedule, selection criteria, and the time and place

for receipt of statements of qualifications. The construction manager-at-risk shall provide public notice of the request for statements of qualifications in a relevant contractor plan room service with statewide circulation, a relevant construction lead generating service with statewide circulation, and on an internet site sponsored by either a governmental entity or a statewide association that represents the governmental entity. The request for statements of qualifications shall be posted not less than thirteen and not more than forty-five days before the date for response.

(2) (a) The construction manager-at-risk shall utilize objective prequalification criteria in the request for statements of qualifications. All firms who meet the objective prequalification criteria as a qualified firm shall be allowed to submit a bid for the relevant trade contract work and materials package. Upon determining which firms meet the prequalification criteria, the construction manager-at-risk shall notify all firms who responded to the request for qualifications whether they successfully meet the prequalification criteria. The notification shall include a list of all firms who were deemed to have successfully met the prequalification criteria. Notification shall be given no less than fifteen days prior to the subcontractor bids being due. Subcontractors who failed to meet the prequalification standards shall also be provided with information regarding which prequalification criteria were not met. In addition, a firm that is prequalified with the state department of transportation pursuant to section 314.1 shall be considered to meet the objective prequalification criteria as a qualified firm and shall be allowed to submit a bid for purposes of work related to parking lots, streets, site development, or bridge structure components.

(b) Prequalification criteria shall be limited to a firm's experience as a contractor, capacity of key personnel, technical competence, capability to perform, the past

performance of the firm and the firm's employees to include the firm's safety record and compliance with state and federal law, and availability to and familiarity with the location of the project subject to bid. Prequalification criteria shall be reasonably and materially related to the relevant trade contract work and materials package. The prequalification criteria shall not include training, testing, or other certifications that may only be obtained through organized labor affiliated organizations or other limited-membership organizations.

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

(4) Notwithstanding any other provisions of this paragraph to the contrary, the construction manager-at-risk may self-perform work for a trade package that is below the adjusted competitive bid threshold established in section 314.1B. If a trade package is in excess of the adjusted competitive bid threshold established in section 314.1B, the construction manager-at-risk shall notify the governmental entity in writing of its intent to submit a bid proposal for a trade package. In submission of a bid, the construction manager-at-risk shall comply with the requirements of this paragraph. The governmental entity shall receive the bids, participate in, and provide oversight of all bid analyses pertinent to the award of subcontracts or rejection of bids on any trade package for which the construction manager-at-risk submits a bid to self-perform. Where the construction

manager-at-risk is not the apparent low bidder, the government shall be responsible for determining whether a recommendation of award to the construction manager-at-risk is in the best interests of the project. A construction manager-at-risk shall not be required to comply with bidding requirements for general conditions as provided in the contract with the governmental entity. If the construction manager-at-risk self-performs the construction work, it shall adhere to any agreement it may have with one or more labor organizations. However, the construction manager-at-risk shall not be obligated to adhere to any terms and conditions of any labor agreement with one or more labor organizations for those trade contracts that are not self-performed by the construction manager-at-risk for the public improvement, and such terms shall be deemed void and unenforceable.

b. If a selected trade contractor materially defaults in the performance of its work or fails to execute a contract, the construction manager-at-risk may, without advertising, fulfill the contract requirements or select a replacement trade contractor to fulfill the contract requirements.

Sec. 10. NEW SECTION. **26A.4 Prohibited contracts.**

1. Notwithstanding any other provision of law to the contrary, a governmental entity shall not be authorized to enter into a design-build contract for the construction of a public improvement. 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.

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