



January 31, 2023

HOUSE BILL No. 1049

DIGEST OF HB 1049 (Updated January 31, 2023 11:45 am - DI 139)

Citations Affected: IC 8-23; IC 9-13; IC 9-21; noncode.

Synopsis: Transportation Matters. Provides that the department of transportation (department) may accept a proposal and award a contract for the construction, improvement, or maintenance of a road if the lowest responsive and qualified bid is less than \$3,000,000. (Current law says if the lowest responsive and qualified bid is less than \$1,000,000.) Provides that the department may accept a proposal and award a contract for the construction, improvement, or maintenance of a road if the lowest responsive and qualified bid is one of three or more bids received by the department for the contract. (Current law says if the lowest responsive and qualified bid is one of four or more bids received by the department for the contract.) Authorizes the department to use construction manager general contractor and progressive design-build delivery methods for certain projects. Defines a "bicycle traffic control signal". Provides that a person may cautiously enter an intersection and make a left turn if turning from the left lane or a designated left-turn lane of a one-way street into another one-way street with the flow of traffic. Provides for the requirements and explanations of colors for bicycle traffic control signals exhibiting colored lights. Urges the legislative council to assign certain topics regarding road funding to an existing study committee. Makes conforming and technical changes.

Effective: Upon passage; July 1, 2023.

Pressel

January 9, 2023, read first time and referred to Committee on Roads and Transportation.
January 31, 2023, amended, reported — Do Pass.

HB 1049—LS 6201/DI 139



January 31, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1049

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-23-9-4, AS AMENDED BY P.L.50-2008,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 4. Notwithstanding any other statute or rule
4 adopted by the department, the department may accept a proposal and
5 award a contract for the construction, improvement, or maintenance of
6 a road if:
7 (1) the lowest responsive and qualified bid is:
8 (A) less than ~~one million dollars (\$1,000,000)~~; **three million**
9 **dollars (\$3,000,000)**;
10 (B) one (1) of ~~four (4)~~ **three (3)** or more bids received by the
11 department for the contract; or
12 (C) not more than fifteen percent (15%) above the estimated
13 cost of the project;
14 (2) the commissioner believes that awarding a contract under this
15 section is in the best interests of the state; and
16 (3) the award would comply with any requirement imposed under
17 section 13 of this chapter.

HB 1049—LS 6201/DI 139



1 SECTION 2. IC 8-23-9.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]:

4 **Chapter 9.5. Project Delivery Methods**

5 **Sec. 1. (a) This chapter authorizes the department to enter into**
6 **a contract for delivery of certain projects by a construction**
7 **manager general contractor or a progressive design-builder.**

8 **(b) The department may adopt rules under IC 4-22-2, including**
9 **emergency rules adopted in the manner provided under**
10 **IC 4-22-2-37.1, to implement this chapter.**

11 **(c) This chapter does not limit or eliminate the responsibility or**
12 **liability imposed by Indiana law on a person providing services to**
13 **the department under this chapter.**

14 **Sec. 2. As used in this chapter, "CMGC" or "construction**
15 **manager general contractor" means a person that is awarded a**
16 **two (2) phase contract for a project, and is responsible for**
17 **providing:**

18 **(1) preconstruction services under phase one (1); and**

19 **(2) if a price agreement is reached, construction services**
20 **under phase two (2);**

21 **of the contract.**

22 **Sec. 3. As used in this chapter, "construction services" means**
23 **the physical construction work undertaken by a CMGC or PDB to**
24 **construct any portion of a project which may be awarded as a**
25 **single contract for a project or multiple contracts for portions of**
26 **a project.**

27 **Sec. 4. As used in this chapter, "design services" means services**
28 **performed by a professional services consultant that is qualified by**
29 **the department to provide services.**

30 **Sec. 5. As used in this chapter, "evaluation committee" refers to**
31 **a group of individuals who are:**

32 **(1) employed by the department;**

33 **(2) responsible for evaluating proposals; and**

34 **(3) responsible for choosing not more than three (3) proposals**
35 **with the highest scores to be considered by the selection panel.**

36 **Sec. 6. As used in this chapter, "GMP" refers to the guaranteed**
37 **maximum price for work established by a contract.**

38 **Sec. 7. As used in this chapter, "person" means an individual, a**
39 **firm, a partnership, a limited liability company, a joint venture, an**
40 **association, a corporation, or another legal entity.**

41 **Sec. 8. As used in this chapter, "preconstruction services"**
42 **means consulting to provide information regarding the impact of**



1 design on the construction services of a project, including:

- 2 (1) scheduling;
 3 (2) work sequencing;
 4 (3) cost engineering;
 5 (4) constructability;
 6 (5) cost estimates; and
 7 (6) risk identification.

8 Sec. 9. As used in this chapter, "professional services
 9 consultant" means a person that performs:

- 10 (1) program management;
 11 (2) construction management;
 12 (3) feasibility studies;
 13 (4) preliminary engineering;
 14 (5) design engineering;
 15 (6) surveying;
 16 (7) mapping; or
 17 (8) architectural services;

18 for a project.

19 Sec. 10. As used in this chapter, "PDB" or "progressive
 20 design-builder" refers to a person that has been awarded a
 21 contract by the department in which design services,
 22 preconstruction services, and construction services of a project are
 23 procured from a person that is selected through a qualifications
 24 based selection process at the earliest feasible stage of the project.

25 Sec. 11. (a) As used in this chapter, "project" means services
 26 provided using a two-phase contract with a CMGC or a PDB for
 27 preconstruction services and construction services to design,
 28 construct, alter, or repair:

- 29 (1) a state highway;
 30 (2) a limited access facility (as defined in IC 8-23-1-28);
 31 (3) a public highway (as defined in IC 9-25-2-4);
 32 (4) a tollway;
 33 (5) a bridge; and
 34 (6) a passenger and freight railroad system.

35 (b) The term does not include a passenger railroad system that
 36 is operated by a commuter transportation district created by
 37 IC 8-5-15.

38 Sec. 12. As used in this chapter, "proposal" means an offer by
 39 a CMGC or PDB to enter into a contract with the department in
 40 response to a request for proposals by the department under
 41 section 16 of this chapter.

42 Sec. 13. As used in this chapter, "selection panel" means a panel



1 of individuals who are:

- 2 (1) employed by the department; and
 3 (2) tasked with interviewing and scoring the three (3)
 4 proposals with the highest scores selected by the evaluation
 5 committee for a possible contract with the department under
 6 this chapter.

7 Sec. 14. As used in this chapter, "request for proposals" refers
 8 to the process by which the department solicits persons to provide
 9 services as a CMGC or PDB under this chapter.

10 Sec. 15. A person may submit a proposal to answer a request for
 11 proposals to provide services as a CMGC or a PDB to the
 12 department for a project if the person is qualified by the
 13 department in compliance with IC 8-23-10.

14 Sec. 16. (a) The department shall issue a request for proposals
 15 to enter into a contract for services by a CMGC or a PDB for a
 16 project under this chapter.

17 (b) A request for proposals must include the following:

- 18 (1) A description of the project.
 19 (2) An estimate of the cost of the project.
 20 (3) A description of the scope of services that the department
 21 expects the CMGC or the PDB to perform.
 22 (4) A list of required deliverables.
 23 (5) The dates on which it is anticipated that each phase of the
 24 project will begin and end.
 25 (6) A reference sample contract form.
 26 (7) The date by which a proposal must be submitted to the
 27 department.
 28 (8) The basis for evaluating a proposal, including a
 29 description of the selection criteria with the weight assigned
 30 to each criteria.
 31 (9) If a GMP is described, information regarding how the
 32 GMP is calculated for the project.
 33 (10) The reasons a contract may be terminated.
 34 (11) Any other instructions, documents, or information
 35 relevant to the project that the department considers relevant
 36 to evaluate the submitted proposals.

37 (c) A person that submits a proposal under this section must
 38 identify each person with which the person proposes to enter into
 39 subcontracts for design services or preconstruction services, if
 40 known at the time the person submits the proposal. The
 41 department may determine requirements for subcontracts under
 42 this subsection.



1 (d) The department may require clarification from a person
2 that submits a proposal to ensure the proposal conforms to the
3 request for proposals.

4 (e) The department may reject a proposal.

5 Sec. 17. (a) Before entering into a contract under this chapter,
6 the department must appoint an evaluation committee.

7 (b) The evaluation committee shall rank the proposals
8 submitted to the department by assigning a score to each proposal
9 based on the evaluation criteria specified in the request for
10 proposals. The three (3) persons that submit the proposals with the
11 highest scores given by the evaluation committee must be
12 interviewed and scored by a selection panel established under this
13 section.

14 (c) The department shall appoint a selection panel to interview
15 and score the three (3) persons that submit the proposals with the
16 highest scores chosen by the evaluation committee under
17 subsection (b).

18 (d) After conducting the interviews required under subsection
19 (c), the selection panel shall score the three (3) proposals using the
20 submitted proposals and information learned during the interview
21 process.

22 (e) The selection panel shall provide a written comprehensive
23 score for each proposal under subsection (d) and submit a
24 recommendation for an award to the commissioner. The
25 commissioner shall make the final selection of the CMGC or PDB.

26 (f) A person selected to perform work for a project under this
27 chapter may not delegate or subcontract preconstruction services,
28 design services, or construction services under a contract to a
29 member of the evaluation committee or the selection panel.

30 (g) A meeting of a selection panel convened for the purpose of
31 interviewing a person that submits a proposal under this chapter
32 is not open to the public.

33 Sec. 18. (a) Upon approval of the final scoring of the CMGCs or
34 the PDBs by the commissioner, the department shall enter into
35 negotiations with the CMGC or PDB with the highest score as
36 determined under section 17 of this chapter for a contract.

37 (b) If the department is unable to negotiate a contract with the
38 person with the highest score for an amount of compensation that
39 the department and the person determine to be fair and
40 reasonable, the department shall terminate negotiations with that
41 person. The department or its authorized representative may then
42 undertake negotiations with the person with the next highest score



1 and continue in this manner until an agreement is reached or until
 2 a determination is made by the department to reject all proposals
 3 submitted under this chapter.

4 (c) If the department does not receive at least two (2) proposals,
 5 the department may not enter into a contract under this chapter.

6 (d) The department may only enter into a contract for services
 7 under this chapter for not more than two (2) projects each
 8 calendar year.

9 Sec. 19. A contract may be conditional upon subsequent
 10 refinements in scope and price and may permit the department to
 11 make changes to the scope of the project without invalidating the
 12 contract.

13 Sec. 20. (a) A CMGC or PDB may not replace a person
 14 identified as a person with which the CMGC or PDB proposes to
 15 enter into a subcontract for services under a contract without:

- 16 (1) the approval of the department; and
- 17 (2) a written determination by the department that a
 18 legitimate reason exists for the replacement.

19 (b) If a CMGC or a PDB violates subsection (a), the department
 20 may cancel the award of or may terminate the contract.

21 Sec. 21. The department or a PDB selected under section 18 of
 22 this chapter shall develop plans and specifications to:

- 23 (1) advertise a proposal for a project under this chapter; and
- 24 (2) accept bids in accordance with IC 8-23-9 and IC 8-23-10.

25 Sec. 22. (a) The department and a CMGC or PDB selected
 26 under section 18 of this chapter shall independently perform
 27 estimates of the cost of construction services.

28 (b) The department and the CMGC or PDB shall endeavor to
 29 negotiate mutually acceptable contract terms for construction
 30 services.

31 (c) If the department is unable to negotiate mutually acceptable
 32 contract terms as described in subsection (b), the department may:

- 33 (1) advertise the proposal for the project;
- 34 (2) accept additional bids; and
- 35 (3) award a contract for construction services;

36 in accordance with IC 8-23-9 and IC 8-23-10.

37 Sec. 23. The department, a CMGC, or a PDB may terminate a
 38 contract as follows:

- 39 (1) For a contract with a CMGC:
 - 40 (A) at any time under phase one (1); or
 - 41 (B) in accordance with the provisions provided in the
 42 request for proposals under phase two (2);



- 1 of the contract.
- 2 (2) For a contract with a PDB, in accordance with the
- 3 provisions provided in the request for proposals.
- 4 **Sec. 24.** The department may proceed to negotiate a contract
- 5 under this chapter with another CMGC or PDB, or terminate a
- 6 project if any of the following occur:
- 7 (1) A contract is terminated under section 23 of this chapter.
- 8 (2) The department and the selected CMGC or PDB are
- 9 unable to reach agreement on a contract.
- 10 (3) The CMGC or PDB selected under section 18 of this
- 11 chapter does not provide the required bonds as described in
- 12 the request for proposals.
- 13 **Sec. 25.** The department shall do the following:
- 14 (1) Publish, on the department's website, the final scoring of
- 15 each proposal submitted to the department for the project as
- 16 determined by the evaluation committee and the selection
- 17 committee.
- 18 (2) Provide, upon the request of a person that submitted a
- 19 proposal, an explanation of the reasons the person was not
- 20 chosen by an evaluation committee or a selection panel.
- 21 **Sec. 26.** (a) A contract with the department entered into under
- 22 this chapter must require the selected CMGC or PDB to provide
- 23 payment and performance bonds in an amount not less than the
- 24 estimated cost of:
- 25 (1) the project; or
- 26 (2) the GMP, as described in the request for proposals.
- 27 (b) Construction services may not be performed until the
- 28 CMGC or the PDB has provided the bonds as required under
- 29 subsection (a).
- 30 (c) A performance or payment bond is not required for, and
- 31 does not provide coverage for, a part of a contract that includes
- 32 only design services.
- 33 (d) This section does not impair the ability of the department to
- 34 seek recovery under a contract from the selected CMGC or PDB
- 35 for errors, omissions, or defects in design services.
- 36 **Sec. 27.** It is a Class C infraction for a person that submits a
- 37 proposal under this chapter to make a false statement regarding
- 38 the financial worth of the person in a proposal or other written
- 39 instrument filed by the person with the department under this
- 40 chapter or rules adopted under this chapter. A person that violates
- 41 this section is disqualified from submitting bids on contracts
- 42 advertised for letting by the department for a period of two (2)



1 years following the date of conviction.

2 **Sec. 28. This chapter expires July 1, 2028.**

3 SECTION 3. IC 9-13-2-14.5 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2023]: **Sec. 14.5. "Bicycle traffic control signal", for purposes of**
6 **IC 9-21-3, has the meaning set forth in IC 9-21-3-0.3.**

7 SECTION 4. IC 9-21-3-0.3 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2023]: **Sec. 0.3. As used in this chapter, "bicycle traffic control**
10 **signal" means a traffic control signal with green, red, and yellow**
11 **bicycle stenciled lenses that is used to direct bicycle traffic on a**
12 **roadway.**

13 SECTION 5. IC 9-21-3-7, AS AMENDED BY P.L.149-2015,
14 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2023]: Sec. 7. (a) Whenever traffic is controlled by traffic
16 control signals exhibiting different colored lights or colored lighted
17 arrows successively, one (1) at a time or in combination, only the
18 colors green, red, or yellow may be used, except for special pedestrian
19 signals under IC 9-21-18.

20 (b) The lights indicate and apply to drivers of vehicles and
21 pedestrians as follows:

22 (1) Green indication means the following:

23 (A) Vehicular traffic facing a circular green signal may
24 proceed straight through or turn right or left, unless a sign at
25 the place prohibits either turn.

26 (B) Vehicular traffic, including vehicles turning right or left,
27 shall yield the right-of-way to other vehicles and to pedestrians
28 lawfully within the intersection or an adjacent sidewalk at the
29 time the signal is exhibited.

30 (C) Vehicular traffic facing a green arrow signal, shown alone
31 or in combination with another indication, may cautiously
32 enter the intersection only to make the movement indicated by
33 the green arrow or other movement permitted by other
34 indications shown at the same time.

35 (D) Vehicular traffic shall yield the right-of-way to pedestrians
36 lawfully within an adjacent crosswalk and to other traffic
37 lawfully using the intersection.

38 (E) Unless otherwise directed by a pedestrian control signal,
39 pedestrians facing a green signal, except when the sole green
40 signal is a turn arrow, may proceed across the roadway within
41 a marked or unmarked crosswalk.

42 (2) Steady yellow indication means the following:



- 1 (A) Vehicular traffic facing a steady circular yellow or yellow
 2 arrow signal is warned that the related green movement is
 3 being terminated and that a red indication will be exhibited
 4 immediately thereafter.
- 5 (B) A pedestrian facing a steady circular yellow or yellow
 6 arrow signal, unless otherwise directed by a pedestrian control
 7 signal, is advised that there is insufficient time to cross the
 8 roadway before a red indication is shown, and a pedestrian
 9 may not start to cross the roadway at that time.
- 10 (3) Steady red indication means the following:
- 11 (A) Except as provided in clauses (B) and (D), vehicular
 12 traffic facing a steady circular red or red arrow signal shall
 13 stop at a clearly marked stop line. However, if there is no
 14 clearly marked stop line, vehicular traffic shall stop before
 15 entering the crosswalk on the near side of the intersection. If
 16 there is no crosswalk, vehicular traffic shall stop before
 17 entering the intersection and shall remain standing until an
 18 indication to proceed is shown.
- 19 (B) Except when a sign is in place prohibiting a turn described
 20 in this ~~subdivision~~, **clause**, vehicular traffic facing a steady red
 21 signal, after coming to a complete stop, may cautiously enter
 22 the intersection to do the following:
- 23 (i) Make a right turn.
- 24 (ii) Make a left turn if turning from the left lane **or a**
 25 **designated left-turn lane** of a one-way street into another
 26 one-way street with the flow of traffic.
- 27 Vehicular traffic making a turn described in this ~~subdivision~~
 28 **clause** shall yield the right-of-way to pedestrians lawfully
 29 within an adjacent crosswalk and to other traffic using the
 30 intersection.
- 31 (C) Unless otherwise directed by a pedestrian control signal
 32 pedestrians facing a steady circular red or red arrow signal
 33 may not enter the roadway.
- 34 (D) This clause does not apply to the operation of an auticycle
 35 **or a bicycle directed by a bicycle traffic control signal**
 36 **under section 8.5 of this chapter.** If the operator of a
 37 motorcycle, motor driven cycle, or bicycle approaches an
 38 intersection that is controlled by a traffic control signal, the
 39 operator may proceed through the intersection on a steady red
 40 signal only if the operator:
- 41 (i) comes to a complete stop at the intersection for at least
 42 one hundred twenty (120) seconds; and



- 1 (ii) exercises due caution as provided by law, otherwise
- 2 treats the traffic control signal as a stop sign, and determines
- 3 that it is safe to proceed.
- 4 (4) No indication or conflicting indications means the following:
- 5 (A) Except as provided in clause (C), vehicular traffic facing
- 6 an intersection having a signal that displays no indication or
- 7 conflicting indications, where no other control is present, shall
- 8 stop before entering the intersection.
- 9 (B) After stopping, vehicular traffic may proceed with caution
- 10 through the intersection and shall yield the right-of-way to
- 11 traffic within the intersection or approaching so closely as to
- 12 constitute an immediate hazard.
- 13 (C) Vehicular traffic entering an intersection or crosswalk
- 14 facing a pedestrian hybrid beacon may proceed without
- 15 stopping if no indication is displayed on the pedestrian hybrid
- 16 beacon.
- 17 (5) This ~~section~~ **subdivision** applies to traffic control signals
- 18 located at a place other than an intersection. A stop required
- 19 under this subdivision must be made at the signal, except when
- 20 the signal is supplemented by a sign or pavement marking
- 21 indicating where the stop must be made.
- 22 SECTION 6. IC 9-21-3-8.5 IS ADDED TO THE INDIANA CODE
- 23 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
- 24 **1, 2023]: Sec. 8.5. (a) Whenever traffic is controlled by a bicycle**
- 25 **traffic control signal exhibiting different colored lights, one (1) at**
- 26 **a time or in combination, only the colors green, red, or yellow may**
- 27 **be used.**
- 28 (b) The lights of a bicycle traffic control signal indicate and
- 29 apply to a person who operates a bicycle as follows:
- 30 (1) Green indication means the following:
- 31 (A) Bicycle traffic facing a green bicycle traffic control
- 32 signal may proceed straight through or turn right or left,
- 33 unless a sign at the place prohibits either turn.
- 34 (B) Bicycle traffic, including a bicycle turning right or left,
- 35 shall yield the right-of-way to other bicycles, vehicles, and
- 36 pedestrians lawfully within the intersection or an adjacent
- 37 sidewalk at the time the bicycle traffic control signal is
- 38 exhibited.
- 39 (C) Bicycle traffic shall yield the right-of-way to
- 40 pedestrians lawfully within an adjacent crosswalk and to
- 41 other traffic lawfully using the intersection.
- 42 (2) Steady yellow indication means bicycle traffic facing a



1 steady yellow bicycle traffic control signal is warned that the
 2 related green movement is being terminated and that a red
 3 indication will be exhibited immediately thereafter.

4 (3) Steady red indication means the following:

5 (A) Except as provided in clauses (B) and (C), bicycle
 6 traffic facing a steady red bicycle traffic control signal
 7 shall stop at a clearly marked stop line. However, if there
 8 is no clearly marked stop line, bicycle traffic shall stop
 9 before entering the crosswalk on the near side of the
 10 intersection. If there is no crosswalk, bicycle traffic shall
 11 stop before entering the intersection and shall remain
 12 standing until an indication to proceed is shown.

13 (B) Except when a sign is in place prohibiting a turn
 14 described in this clause, bicycle traffic facing a steady red
 15 bicycle traffic control signal, after coming to a complete
 16 stop, may cautiously enter the intersection to do the
 17 following:

18 (i) Make a right turn.

19 (ii) Make a left turn if turning from the left lane or a
 20 designated left-turn lane of a one-way street into another
 21 one-way street with the flow of traffic.

22 Bicycle traffic making a turn described in this clause shall
 23 yield the right-of-way to pedestrians lawfully within an
 24 adjacent crosswalk and to other bicycle traffic using the
 25 intersection.

26 (C) If a person who operates a bicycle approaches an
 27 intersection that is controlled by a bicycle traffic control
 28 signal, the person may proceed through the intersection on
 29 a red bicycle traffic control signal only if the person:

30 (i) comes to a complete stop at the intersection for at
 31 least one hundred twenty (120) seconds; and

32 (ii) exercises due caution as provided by law, otherwise
 33 treats the bicycle traffic control signal as a stop sign, and
 34 determines that it is safe to proceed.

35 (4) No indication or conflicting indications means the
 36 following:

37 (A) Except as provided in clause (C), bicycle traffic facing
 38 an intersection having a bicycle traffic control signal that
 39 displays no indication or conflicting indications, where no
 40 other control is present, shall stop before entering the
 41 intersection.

42 (B) After stopping, bicycle traffic may proceed with



1 **caution through the intersection and shall yield the**
2 **right-of-way to traffic that is:**
3 **(i) within the intersection; or**
4 **(ii) approaching so closely as to constitute an immediate**
5 **hazard.**
6 **(C) Bicycle traffic entering an intersection or crosswalk**
7 **facing a pedestrian hybrid beacon may proceed without**
8 **stopping if no indication is displayed on the pedestrian**
9 **hybrid beacon.**
10 **(5) This subdivision applies to a bicycle traffic control signal**
11 **located at a place other than an intersection. A stop required**
12 **by this subdivision must be made at the bicycle traffic control**
13 **signal, except when the bicycle traffic control signal is**
14 **supplemented by a sign or pavement marking indicating**
15 **where the stop must be made.**
16 **(c) Except for a railroad grade crossing, whenever an**
17 **illuminated flashing red or yellow light is used in a bicycle traffic**
18 **control signal or with a traffic sign, bicycle traffic shall obey the**
19 **bicycle traffic control signal in the following manner:**
20 **(1) Flashing red (stop signal) means the following:**
21 **(A) When a red lens is illuminated by rapid intermittent**
22 **flashes, a person who operates a bicycle shall stop at a**
23 **clearly marked stop line before entering the crosswalk on**
24 **the near side of the intersection.**
25 **(B) If no line exists, the person shall stop at the point**
26 **nearest the intersecting roadway where the person has a**
27 **view of approaching traffic on the intersecting roadway**
28 **before entering the roadway.**
29 **(C) The right to proceed is subject to the rules applicable**
30 **after making a stop at a stop sign.**
31 **(2) Except as provided in subdivision (3), flashing yellow**
32 **(caution signal) means that when a yellow lens is illuminated**
33 **with rapid intermittent flashes, a person who operates a**
34 **bicycle may proceed through the intersection or past the**
35 **signal only with caution.**
36 **(3) When a yellow lens is illuminated with rapid intermittent**
37 **flashes, a person who operates a bicycle may turn only after**
38 **yielding to oncoming traffic.**
39 **SECTION 7. IC 9-21-3-11, AS AMENDED BY P.L.110-2020,**
40 **SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
41 **JULY 1, 2023]: Sec. 11. A person who violates section 7, 8, 8.5, or 9**
42 **of this chapter commits a Class C infraction. However, a person who**



1 violates section 7, 8, **8.5**, or 9 of this chapter in a manner that results in
2 bodily injury to a person commits a Class A infraction.
3 SECTION 8. [EFFECTIVE UPON PASSAGE] **(a) The general**
4 **assembly urges the legislative council to assign to an existing study**
5 **committee the following topics:**
6 **(1) The review of state highway and major bridge needs.**
7 **(2) The verification of road and bridge needs at the local level.**
8 **(3) The development of a long term plan for state highway**
9 **and major bridge needs that:**
10 **(A) will achieve the recommended pavement and bridge**
11 **conditions;**
12 **(B) will complete the current statewide priority projects by**
13 **finishing projects that have been started;**
14 **(C) includes Tier 1, 2, and 3 projects; and**
15 **(D) uses the model developed by the Indiana department of**
16 **transportation, including sustainable funding mechanisms**
17 **for the various components of the plan.**
18 **(4) The development of a long term plan for local road and**
19 **bridge needs.**
20 **(b) This SECTION expires January 1, 2024.**
21 SECTION 9. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1049, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-23-9-4, AS AMENDED BY P.L.50-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. Notwithstanding any other statute or rule adopted by the department, the department may accept a proposal and award a contract for the construction, improvement, or maintenance of a road if:

- (1) the lowest responsive and qualified bid is:
 - (A) less than ~~one million dollars (\$1,000,000)~~; **three million dollars (\$3,000,000)**;
 - (B) one (1) of ~~four (4)~~ **three (3)** or more bids received by the department for the contract; or
 - (C) not more than fifteen percent (15%) above the estimated cost of the project;
- (2) the commissioner believes that awarding a contract under this section is in the best interests of the state; and
- (3) the award would comply with any requirement imposed under section 13 of this chapter.

SECTION 2. IC 8-23-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 9.5. Project Delivery Methods

Sec. 1. (a) This chapter authorizes the department to enter into a contract for delivery of certain projects by a construction manager general contractor or a progressive design-builder.

(b) The department may adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided under IC 4-22-2-37.1, to implement this chapter.

(c) This chapter does not limit or eliminate the responsibility or liability imposed by Indiana law on a person providing services to the department under this chapter.

Sec. 2. As used in this chapter, "CMGC" or "construction manager general contractor" means a person that is awarded a two (2) phase contract for a project, and is responsible for providing:

- (1) preconstruction services under phase one (1); and**

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(2) if a price agreement is reached, construction services under phase two (2);
of the contract.

Sec. 3. As used in this chapter, "construction services" means the physical construction work undertaken by a CMGC or PDB to construct any portion of a project which may be awarded as a single contract for a project or multiple contracts for portions of a project.

Sec. 4. As used in this chapter, "design services" means services performed by a professional services consultant that is qualified by the department to provide services.

Sec. 5. As used in this chapter, "evaluation committee" refers to a group of individuals who are:

- (1) employed by the department;
- (2) responsible for evaluating proposals; and
- (3) responsible for choosing not more than three (3) proposals with the highest scores to be considered by the selection panel.

Sec. 6. As used in this chapter, "GMP" refers to the guaranteed maximum price for work established by a contract.

Sec. 7. As used in this chapter, "person" means an individual, a firm, a partnership, a limited liability company, a joint venture, an association, a corporation, or another legal entity.

Sec. 8. As used in this chapter, "preconstruction services" means consulting to provide information regarding the impact of design on the construction services of a project, including:

- (1) scheduling;
- (2) work sequencing;
- (3) cost engineering;
- (4) constructability;
- (5) cost estimates; and
- (6) risk identification.

Sec. 9. As used in this chapter, "professional services consultant" means a person that performs:

- (1) program management;
- (2) construction management;
- (3) feasibility studies;
- (4) preliminary engineering;
- (5) design engineering;
- (6) surveying;
- (7) mapping; or
- (8) architectural services;

for a project.



Sec. 10. As used in this chapter, "PDB" or "progressive design-builder" refers to a person that has been awarded a contract by the department in which design services, preconstruction services, and construction services of a project are procured from a person that is selected through a qualifications based selection process at the earliest feasible stage of the project.

Sec. 11. (a) As used in this chapter, "project" means services provided using a two-phase contract with a CMGC or a PDB for preconstruction services and construction services to design, construct, alter, or repair:

- (1) a state highway;
- (2) a limited access facility (as defined in IC 8-23-1-28);
- (3) a public highway (as defined in IC 9-25-2-4);
- (4) a tollway;
- (5) a bridge; and
- (6) a passenger and freight railroad system.

(b) The term does not include a passenger railroad system that is operated by a commuter transportation district created by IC 8-5-15.

Sec. 12. As used in this chapter, "proposal" means an offer by a CMGC or PDB to enter into a contract with the department in response to a request for proposals by the department under section 16 of this chapter.

Sec. 13. As used in this chapter, "selection panel" means a panel of individuals who are:

- (1) employed by the department; and
- (2) tasked with interviewing and scoring the three (3) proposals with the highest scores selected by the evaluation committee for a possible contract with the department under this chapter.

Sec. 14. As used in this chapter, "request for proposals" refers to the process by which the department solicits persons to provide services as a CMGC or PDB under this chapter.

Sec. 15. A person may submit a proposal to answer a request for proposals to provide services as a CMGC or a PDB to the department for a project if the person is qualified by the department in compliance with IC 8-23-10.

Sec. 16. (a) The department shall issue a request for proposals to enter into a contract for services by a CMGC or a PDB for a project under this chapter.

(b) A request for proposals must include the following:

- (1) A description of the project.



- (2) An estimate of the cost of the project.**
- (3) A description of the scope of services that the department expects the CMGC or the PDB to perform.**
- (4) A list of required deliverables.**
- (5) The dates on which it is anticipated that each phase of the project will begin and end.**
- (6) A reference sample contract form.**
- (7) The date by which a proposal must be submitted to the department.**
- (8) The basis for evaluating a proposal, including a description of the selection criteria with the weight assigned to each criteria.**
- (9) If a GMP is described, information regarding how the GMP is calculated for the project.**
- (10) The reasons a contract may be terminated.**
- (11) Any other instructions, documents, or information relevant to the project that the department considers relevant to evaluate the submitted proposals.**

(c) A person that submits a proposal under this section must identify each person with which the person proposes to enter into subcontracts for design services or preconstruction services, if known at the time the person submits the proposal. The department may determine requirements for subcontracts under this subsection.

(d) The department may require clarification from a person that submits a proposal to ensure the proposal conforms to the request for proposals.

(e) The department may reject a proposal.

Sec. 17. (a) Before entering into a contract under this chapter, the department must appoint an evaluation committee.

(b) The evaluation committee shall rank the proposals submitted to the department by assigning a score to each proposal based on the evaluation criteria specified in the request for proposals. The three (3) persons that submit the proposals with the highest scores given by the evaluation committee must be interviewed and scored by a selection panel established under this section.

(c) The department shall appoint a selection panel to interview and score the three (3) persons that submit the proposals with the highest scores chosen by the evaluation committee under subsection (b).

(d) After conducting the interviews required under subsection



(c), the selection panel shall score the three (3) proposals using the submitted proposals and information learned during the interview process.

(e) The selection panel shall provide a written comprehensive score for each proposal under subsection (d) and submit a recommendation for an award to the commissioner. The commissioner shall make the final selection of the CMGC or PDB.

(f) A person selected to perform work for a project under this chapter may not delegate or subcontract preconstruction services, design services, or construction services under a contract to a member of the evaluation committee or the selection panel.

(g) A meeting of a selection panel convened for the purpose of interviewing a person that submits a proposal under this chapter is not open to the public.

Sec. 18. (a) Upon approval of the final scoring of the CMGCs or the PDBs by the commissioner, the department shall enter into negotiations with the CMGC or PDB with the highest score as determined under section 17 of this chapter for a contract.

(b) If the department is unable to negotiate a contract with the person with the highest score for an amount of compensation that the department and the person determine to be fair and reasonable, the department shall terminate negotiations with that person. The department or its authorized representative may then undertake negotiations with the person with the next highest score and continue in this manner until an agreement is reached or until a determination is made by the department to reject all proposals submitted under this chapter.

(c) If the department does not receive at least two (2) proposals, the department may not enter into a contract under this chapter.

(d) The department may only enter into a contract for services under this chapter for not more than two (2) projects each calendar year.

Sec. 19. A contract may be conditional upon subsequent refinements in scope and price and may permit the department to make changes to the scope of the project without invalidating the contract.

Sec. 20. (a) A CMGC or PDB may not replace a person identified as a person with which the CMGC or PDB proposes to enter into a subcontract for services under a contract without:

- (1) the approval of the department; and
- (2) a written determination by the department that a legitimate reason exists for the replacement.



(b) If a CMGC or a PDB violates subsection (a), the department may cancel the award of or may terminate the contract.

Sec. 21. The department or a PDB selected under section 18 of this chapter shall develop plans and specifications to:

- (1) advertise a proposal for a project under this chapter; and
- (2) accept bids in accordance with IC 8-23-9 and IC 8-23-10.

Sec. 22. (a) The department and a CMGC or PDB selected under section 18 of this chapter shall independently perform estimates of the cost of construction services.

(b) The department and the CMGC or PDB shall endeavor to negotiate mutually acceptable contract terms for construction services.

(c) If the department is unable to negotiate mutually acceptable contract terms as described in subsection (b), the department may:

- (1) advertise the proposal for the project;
- (2) accept additional bids; and
- (3) award a contract for construction services;

in accordance with IC 8-23-9 and IC 8-23-10.

Sec. 23. The department, a CMGC, or a PDB may terminate a contract as follows:

- (1) For a contract with a CMGC:
 - (A) at any time under phase one (1); or
 - (B) in accordance with the provisions provided in the request for proposals under phase two (2);of the contract.
- (2) For a contract with a PDB, in accordance with the provisions provided in the request for proposals.

Sec. 24. The department may proceed to negotiate a contract under this chapter with another CMGC or PDB, or terminate a project if any of the following occur:

- (1) A contract is terminated under section 23 of this chapter.
- (2) The department and the selected CMGC or PDB are unable to reach agreement on a contract.
- (3) The CMGC or PDB selected under section 18 of this chapter does not provide the required bonds as described in the request for proposals.

Sec. 25. The department shall do the following:

- (1) Publish, on the department's website, the final scoring of each proposal submitted to the department for the project as determined by the evaluation committee and the selection committee.
- (2) Provide, upon the request of a person that submitted a



proposal, an explanation of the reasons the person was not chosen by an evaluation committee or a selection panel.

Sec. 26. (a) A contract with the department entered into under this chapter must require the selected CMGC or PDB to provide payment and performance bonds in an amount not less than the estimated cost of:

- (1) the project; or
- (2) the GMP, as described in the request for proposals.

(b) Construction services may not be performed until the CMGC or the PDB has provided the bonds as required under subsection (a).

(c) A performance or payment bond is not required for, and does not provide coverage for, a part of a contract that includes only design services.

(d) This section does not impair the ability of the department to seek recovery under a contract from the selected CMGC or PDB for errors, omissions, or defects in design services.

Sec. 27. It is a Class C infraction for a person that submits a proposal under this chapter to make a false statement regarding the financial worth of the person in a proposal or other written instrument filed by the person with the department under this chapter or rules adopted under this chapter. A person that violates this section is disqualified from submitting bids on contracts advertised for letting by the department for a period of two (2) years following the date of conviction.

Sec. 28. This chapter expires July 1, 2028."

Page 3, line 5, reset in roman "the left lane".

Page 3, line 5, after "lane" insert "or".

Page 4, line 42, after "from" insert "the left lane or".

Page 6, after line 25, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE UPON PASSAGE] **(a)** The general assembly urges the legislative council to assign to an existing study committee the following topics:

- (1) The review of state highway and major bridge needs.
- (2) The verification of road and bridge needs at the local level.
- (3) The development of a long term plan for state highway and major bridge needs that:

- (A) will achieve the recommended pavement and bridge conditions;
- (B) will complete the current statewide priority projects by finishing projects that have been started;
- (C) includes Tier 1, 2, and 3 projects; and



(D) uses the model developed by the Indiana department of transportation, including sustainable funding mechanisms for the various components of the plan.

(4) The development of a long term plan for local road and bridge needs.

(b) This SECTION expires January 1, 2024.

SECTION 7. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1049 as introduced.)

PRESSEL

Committee Vote: yeas 11, nays 0.

