

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 ENROLLED ACT No. 1049

AN ACT to amend the Indiana Code concerning motor vehicles.

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

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

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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
- (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.

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



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

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

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

(1) Green indication means the following:

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

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

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

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

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

(2) Steady yellow indication means the following:

(A) Vehicular traffic facing a steady circular yellow or yellow arrow signal is warned that the related green movement is being terminated and that a red indication will be exhibited immediately thereafter.

(B) A pedestrian facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian control



signal, is advised that there is insufficient time to cross the roadway before a red indication is shown, and a pedestrian may not start to cross the roadway at that time.

(3) Steady red indication means the following:

(A) Except as provided in clauses (B) and (D), vehicular traffic facing a steady circular red or red arrow signal shall stop at a clearly marked stop line. However, if there is no clearly marked stop line, vehicular traffic shall stop before entering the crosswalk on the near side of the intersection. If there is no crosswalk, vehicular traffic shall stop before entering the intersection and shall remain standing until an indication to proceed is shown.

(B) Except when a sign is in place prohibiting a turn described in this ~~subdivision~~, **clause**, vehicular traffic facing a steady red signal, after coming to a complete stop, may cautiously enter the intersection to do the following:

(i) Make a right turn.

(ii) 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.

Vehicular traffic making a turn described in this ~~subdivision~~ **clause** shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic using the intersection.

(C) Unless otherwise directed by a pedestrian control signal pedestrians facing a steady circular red or red arrow signal may not enter the roadway.

(D) This clause does not apply to the operation of an autocycle **or a bicycle directed by a bicycle traffic control signal under section 8.5 of this chapter**. If the operator of a motorcycle, motor driven cycle, or bicycle approaches an intersection that is controlled by a traffic control signal, the operator may proceed through the intersection on a steady red signal only if the operator:

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

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

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

(A) Except as provided in clause (C), vehicular traffic facing an intersection having a signal that displays no indication or



conflicting indications, where no other control is present, shall stop before entering the intersection.

(B) After stopping, vehicular traffic may proceed with caution through the intersection and shall yield the right-of-way to traffic within the intersection or approaching so closely as to constitute an immediate hazard.

(C) Vehicular traffic entering an intersection or crosswalk facing a pedestrian hybrid beacon may proceed without stopping if no indication is displayed on the pedestrian hybrid beacon.

(5) This ~~section~~ **subdivision** applies to traffic control signals located at a place other than an intersection. A stop required under this subdivision must be made at the signal, except when the signal is supplemented by a sign or pavement marking indicating where the stop must be made.

SECTION 6. IC 9-21-3-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 8.5. (a) Whenever traffic is controlled by a bicycle traffic control signal exhibiting different colored lights, one (1) at a time or in combination, only the colors green, red, or yellow may be used.**

(b) The lights of a bicycle traffic control signal indicate and apply to a person who operates a bicycle as follows:

(1) Green indication means the following:

(A) Bicycle traffic facing a green bicycle traffic control signal may proceed straight through or turn right or left, unless a sign at the place prohibits either turn.

(B) Bicycle traffic, including a bicycle turning right or left, shall yield the right-of-way to other bicycles, vehicles, and pedestrians lawfully within the intersection or an adjacent sidewalk at the time the bicycle traffic control signal is exhibited.

(C) Bicycle traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(2) Steady yellow indication means bicycle traffic facing a steady yellow bicycle traffic control signal is warned that the related green movement is being terminated and that a red indication will be exhibited immediately thereafter.

(3) Steady red indication means the following:

(A) Except as provided in clauses (B) and (C), bicycle traffic facing a steady red bicycle traffic control signal



shall stop at a clearly marked stop line. However, if there is no clearly marked stop line, bicycle traffic shall stop before entering the crosswalk on the near side of the intersection. If there is no crosswalk, bicycle traffic shall stop before entering the intersection and shall remain standing until an indication to proceed is shown.

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

- (i) Make a right turn.
- (ii) 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.

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

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

- (i) comes to a complete stop at the intersection for at least one hundred twenty (120) seconds; and
- (ii) exercises due caution as provided by law, otherwise treats the bicycle traffic control signal as a stop sign, and determines that it is safe to proceed.

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

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

(B) After stopping, bicycle traffic may proceed with caution through the intersection and shall yield the right-of-way to traffic that is:

- (i) within the intersection; or
- (ii) approaching so closely as to constitute an immediate hazard.

(C) Bicycle traffic entering an intersection or crosswalk



facing a pedestrian hybrid beacon may proceed without stopping if no indication is displayed on the pedestrian hybrid beacon.

(5) This subdivision applies to a bicycle traffic control signal located at a place other than an intersection. A stop required by this subdivision must be made at the bicycle traffic control signal, except when the bicycle traffic control signal is supplemented by a sign or pavement marking indicating where the stop must be made.

(c) Except for a railroad grade crossing, whenever an illuminated flashing red or yellow light is used in a bicycle traffic control signal or with a traffic sign, bicycle traffic shall obey the bicycle traffic control signal in the following manner:

(1) Flashing red (stop signal) means the following:

(A) When a red lens is illuminated by rapid intermittent flashes, a person who operates a bicycle shall stop at a clearly marked stop line before entering the crosswalk on the near side of the intersection.

(B) If no line exists, the person shall stop at the point nearest the intersecting roadway where the person has a view of approaching traffic on the intersecting roadway before entering the roadway.

(C) The right to proceed is subject to the rules applicable after making a stop at a stop sign.

(2) Except as provided in subdivision (3), flashing yellow (caution signal) means that when a yellow lens is illuminated with rapid intermittent flashes, a person who operates a bicycle may proceed through the intersection or past the signal only with caution.

(3) When a yellow lens is illuminated with rapid intermittent flashes, a person who operates a bicycle may turn only after yielding to oncoming traffic.

SECTION 7. IC 9-21-3-11, AS AMENDED BY P.L.110-2020, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. A person who violates section 7, 8, **8.5**, or 9 of this chapter commits a Class C infraction. However, a person who violates section 7, 8, **8.5**, or 9 of this chapter in a manner that results in bodily injury to a person commits a Class A infraction.

SECTION 8. [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.**
 - (5) How to reduce or prevent fatalities on Indiana roads and highways, including in high risk corridors and areas.**
- (b) This SECTION expires January 1, 2024.**
SECTION 9. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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