



January 28, 2014

HOUSE BILL No. 1196

DIGEST OF HB 1196 (Updated January 28, 2014 1:16 pm - DI 96)

Citations Affected: IC 5-32 .

Synopsis: Construction managers as constructors. Authorizes state educational institutions to employ construction managers as constructors for certain construction projects.

Effective: July 1, 2014.

Truitt, Huston, Ober, Klinker

January 14, 2014, read first time and referred to Committee on Employment, Labor and Pensions.
January 28, 2014, amended, reported — Do Pass.

HB 1196—LS 6679/DI 75



January 28, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1196

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 5-32 IS ADDED TO THE INDIANA CODE AS A
2 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
3 **2014]:**
4 **ARTICLE 32. EMPLOYMENT OF CONSTRUCTION**
5 **MANAGERS AS CONSTRUCTORS FOR PROJECTS**
6 **Chapter 1. General Provisions**
7 **Sec. 1. Except as provided in this article, IC 5-16 applies to the**
8 **construction projects of a state educational institution performed**
9 **under this article.**
10 **Chapter 2. Definitions**
11 **Sec. 1. The definitions in this chapter apply throughout this**
12 **article.**
13 **Sec. 2. "Architect" refers to a person registered under**
14 **IC 25-4-1.**
15 **Sec. 3. "CMc" or "construction manager as constructor" means**
16 **a person that provides CMc services.**

HB 1196—LS 6679/DI 75



1 **Sec. 4. "CMc contract" refers to a contract for CMc services.**

2 **Sec. 5. "CMc services" includes the following:**

3 **(1) Preconstruction phase services, including advice during**
4 **the preconstruction phase of the project as described in the**
5 **RFP.**

6 **(2) Consultation, collaboration, project construction**
7 **management, and other services as described in the RFP,**
8 **regarding the construction during and after the design and**
9 **construction phases. However, the CMc may not procure the**
10 **project professional architectural and engineering design**
11 **services. The state educational institution must directly**
12 **contract for the services of the architect and engineer of**
13 **record.**

14 **(3) Development of a construction schedule, estimated cost of**
15 **construction, and analysis of qualifications of first tier**
16 **subcontractors.**

17 **(4) Subject to the CMc contract, a guarantee of:**

18 **(A) the cost of the project; and**

19 **(B) the project schedule.**

20 **Sec. 6. "Engineer" refers to a person registered under**
21 **IC 25-31-1.**

22 **Sec. 7. "Evaluation committee" refers to a group of individuals**
23 **who are responsible for evaluating the responses of offerors to the**
24 **RFP.**

25 **Sec. 8. "First tier subcontractor" refers to a subcontractor who**
26 **contracts directly with the CMc.**

27 **Sec. 9. "GMP" refers to the guaranteed maximum price for the**
28 **work as may be established in the CMc contract.**

29 **Sec. 10. "Offeror" refers to a person who submits a response to**
30 **an RFP.**

31 **Sec. 11. "Person" refers to a natural person, a partnership, a**
32 **limited liability company, or a corporation.**

33 **Sec. 12. (a) "Project" means the construction, remodeling,**
34 **rehabilitation, or repair of buildings or other facilities owned by a**
35 **state educational institution as described in the RFP.**

36 **(b) The term does not include the construction, remodeling,**
37 **rehabilitation, or repair of roads, highways, bridges, or potable**
38 **water or wastewater infrastructure.**

39 **Sec. 13. "Request for proposals" or "RFP" refers to the process**
40 **by which a state educational institution solicits persons to provide**
41 **CMc services under this article.**

42 **Chapter 3. Request for Proposals**



1 **Sec. 1.** If a state educational institution chooses to use the
 2 procedures set forth in this article when performing a public works
 3 project, the state educational institution shall select a CMc as
 4 provided in this chapter.

5 **Sec. 2. (a)** The state educational institution shall issue a request
 6 for proposals.

7 **(b)** Notice of a request for proposals shall be given as other
 8 notices are required to be given under IC 5-16.

9 **Sec. 3.** A request for proposals must include at least the
 10 following:

11 **(1)** A statement of the criteria, process, and procedures, which
 12 must include consideration of qualifications and fees, by
 13 which:

14 **(A)** an offeror will be evaluated;

15 **(B)** a CMc will be selected; and

16 **(C)** a CMc contract will be awarded.

17 **(2)** Information about how the GMP may be established as
 18 part of the contract.

19 **(3)** A description of the insurance requirements for the CMc.

20 **Sec. 4.** Each offeror selected to meet with the evaluation
 21 committee, based on the evaluation committee's review of the RFP
 22 responses, must be given an equal opportunity to meet and
 23 communicate with the evaluation committee.

24 **Sec. 5.** A summary of the evaluation committee's evaluation of
 25 each offeror is subject to disclosure under IC 5-14-3, but only after
 26 the CMc contract has been awarded.

27 **Sec. 6.** If the state educational institution determines to proceed
 28 with the project, the state educational institution shall enter into
 29 negotiations with the offeror whose proposal has been selected by
 30 the evaluation committee considering:

31 **(1)** the responses to the RFP;

32 **(2)** any interviews with selected offerors; and

33 **(3)** evaluation of fees.

34 **Chapter 4. CMc Contract**

35 **Sec. 1.** After the state educational institution has selected an
 36 offeror to be the CMc, the state educational institution and that
 37 offeror may negotiate the final terms and conditions of the contract
 38 for CMc services for the project.

39 **Sec. 2. (a)** Subject to this article, the CMc contract must require
 40 the CMc to provide payment and performance bonds in an amount
 41 not less than the estimated construction costs of the project or the
 42 GMP, as provided by the RFP.



1 (b) Construction may not be performed until the CMc has
 2 provided the bonds for that construction as required in the RFP
 3 and IC 5-32-6.

4 Sec. 3. A CMc contract must describe the details of any
 5 adjustment of compensation or other incentives negotiated between
 6 the state educational institution and the CMc.

7 Sec. 4. A CMc contract may describe whether the CMc and the
 8 state educational institution agree to any cost overrun or delay
 9 damages or early completion incentives.

10 Sec. 5. Changes in the contract for CMc services may be made
 11 as provided in the CMc contract.

12 Sec. 6. A state educational institution or CMc may terminate the
 13 CMc contract before the GMP has been determined, if the RFP
 14 provides for a GMP.

15 Sec. 7. (a) If any of the following occur, the state educational
 16 institution may proceed as described in subsection (b):

17 (1) The CMc contract is terminated under section 6 of this
 18 chapter.

19 (2) The state educational institution and the selected offeror
 20 are unable to reach agreement on a CMc contract.

21 (3) The selected offeror does not provide the required bonds
 22 as provided in the RFP or this article.

23 (b) If any of the events described in subsection (a)(1), (a)(2), or
 24 (a)(3) occur, the state educational institution may do any of the
 25 following:

26 (1) Negotiate a contract with another offeror.

27 (2) Award contracts and complete the project under IC 5-16.

28 (3) Terminate the project.

29 Sec. 8. A CMc contract may describe if and when the GMP will
 30 be determined. If a GMP is established, the contract must describe
 31 all clarifications and assumptions on which the GMP is based.

32 Chapter 5. CMc Award of First Tier Subcontracts

33 Sec. 1. Before a first tier subcontract is awarded, the CMc must
 34 invite bids from at least three (3) bidders. The CMc must mail a
 35 notice to each bidder at least ten (10) days before the time fixed for
 36 receiving bids.

37 Sec. 2. Each bidder must submit under oath as a part of the bid
 38 a statement of the following information:

39 (1) The bidder's professional experience.

40 (2) The bidder's proposed plan for performing the work.

41 (3) The equipment and personnel available for the
 42 performance of the work.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (4) The bidder's current financial status.
- (5) The bidder's best estimate of the cost of each item of work to be performed, including a breakdown of all labor and materials required to complete the work.

Sec. 3. After bids have been submitted to the CMc, the CMc may contract only with the lowest and best bidder, as determined by the CMc in consultation with the state educational institution. For purposes of determining the lowest and best bid under this subsection, the following, in addition to the bid price, may be considered:

- (1) Whether the bidder has submitted a bid that conforms in all material respects to the specifications.
- (2) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
- (3) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.
- (4) The ability and capacity of the bidder to perform the work.
- (5) The integrity, character, and reputation of the bidder.
- (6) The competence and experience of the bidder.
- (7) Other criteria that the CMc considers appropriate after consultation with the state educational institution.

Sec. 4. Once the lowest and best bidder is selected, the CMc's contract with that bidder must include terms and conditions that are designed to accomplish the work at the lowest possible cost to the state educational institution.

Sec. 5. (a) Except as provided in subsection (b), a bid is a public record subject to public inspection under IC 5-14-3.

(b) A bid is not subject to inspection and copying under IC 5-14-3 until a contract has been awarded or the solicitation of bids has been canceled.

Chapter 6. Bonds

Sec. 1. The CMc shall execute a payment bond to the state educational institution, approved by the state educational institution, in an amount equal to the GMP, if established, or the proposed construction cost. The payment bond must be conditioned for payment by the CMc, the CMc's successors and assigns, and by the first tier subcontractors, their successors and assigns, of all indebtedness that may accrue to any person for any labor or service performed, materials furnished, or service



1 rendered in the project. The bond by its terms must be conditioned
2 to directly inure to the benefit of subcontractors, laborers,
3 suppliers of materials, and those performing service who have
4 furnished or supplied labor, material, or service for the project.

5 Sec. 2. (a) The CMc shall furnish proof of its ability to obtain a
6 valid performance bond that is acceptable to the state educational
7 institution in an amount equal to the GMP, if established, or the
8 proposed construction cost.

9 (b) The CMc shall furnish the bond at the time of an early
10 release construction package or when the GMP is determined and
11 provided to the state educational institution.

12 (c) If the bond is acceptable to the state educational institution,
13 the performance bond may provide for incremental bonding in the
14 form of multiple or chronological bonds that, when taken as a
15 whole, equal the GMP, if established, or the proposed construction
16 cost. The surety on the bond shall not be released for a period of
17 one (1) year after final settlement with the CMc. A change,
18 modification, omission, or addition in and to the terms or
19 conditions of the contract, plans, specifications, drawings, or
20 profile or any irregularity or defect in the contract or in the
21 proceedings preliminary to the letting and awarding of the CMc
22 contract does not in any way affect or operate to release or
23 discharge the surety.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1196, 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, line 7, delete "the applicable public" and insert "**IC 5-16**".

Page 1, line 8, delete "works statute".

Page 1, line 8, delete "the particular" and insert "**a state educational institution**".

Page 1, line 9, delete "public agency".

Page 1, delete lines 13 through 16.

Page 2, delete lines 1 through 4.

Page 2, line 5, delete "3." and insert "**2.**".

Page 2, line 7, delete "4." and insert "**3.**".

Page 2, line 9, delete "5." and insert "**4.**".

Page 2, line 10, delete "6." and insert "**5.**".

Page 2, line 17, after "phases." insert "**However, the CMC may not procure the project professional architectural and engineering design services. The state educational institution must directly contract for the services of the architect and engineer of record.**".

Page 2, line 19, delete "quality analysis." and insert "**analysis of qualifications of first tier subcontractors.**".

Page 2, line 23, delete "7." and insert "**6.**".

Page 2, line 25, delete "8." and insert "**7.**".

Page 2, line 28, delete "9." and insert "**8.**".

Page 2, line 30, delete "10." and insert "**9.**".

Page 2, line 32, delete "11." and insert "**10.**".

Page 2, line 34, delete "12." and insert "**11.**".

Page 2, line 36, delete "13." and insert "**12.**".

Page 2, line 38, delete "public agency" and insert "**state educational institution**".

Page 2, line 40, delete "a road, highway, or bridge unless" and insert "**roads, highways, bridges, or potable water or wastewater infrastructure.**".

Page 2, delete lines 41 through 42.

Page 3, delete lines 1 through 4.

Page 3, line 5, delete "15." and insert "**13.**".

Page 3, line 6, delete "public agency" and insert "**state educational institution**".

Page 3, line 9, delete "A public agency" and insert "**If a state educational institution chooses to use the procedures set forth in**



this article when performing a public works project, the state educational institution".

Page 3, line 11, delete "public agency" and insert "**state educational institution**".

Page 3, line 13, delete "the applicable public works" and insert "**IC 5-16**".

Page 3, delete line 14.

Page 3, line 33, delete "public agency" and insert "**state educational institution**".

Page 3, line 34, delete "public agency" and insert "**state educational institution**".

Page 3, line 41, delete "public agency" and insert "**state educational institution**".

Page 3, line 42, delete "public agency" and insert "**state educational institution**".

Page 4, line 6, delete "if" and insert "**as**".

Page 4, line 12, delete "public agency" and insert "**state educational institution**".

Page 4, line 14, delete "public agency" and insert "**state educational institution**".

Page 4, line 18, delete "public agency" and insert "**state educational institution**".

Page 4, line 21, delete "public agency" and insert "**state educational institution**".

Page 4, line 25, delete "public agency" and insert "**state educational institution**".

Page 4, line 30, delete "public agency" and insert "**state educational institution**".

Page 4, line 32, delete "any other" and insert "**IC 5-16**".

Page 4, delete line 33.

Page 5, line 13, delete "public agency." and insert "**state educational institution**".

Page 5, line 29, delete "public agency." and insert "**state educational institution**".

Page 5, line 33, delete "public agency." and insert "**state educational institution**".

Page 5, between lines 33 and 34, begin a new paragraph and insert:

"Sec. 5. (a) Except as provided in subsection (b), a bid is a public record subject to public inspection under IC 5-14-3.

(b) A bid is not subject to inspection and copying under IC 5-14-3 until a contract has been awarded or the solicitation of bids has been canceled."



Page 5, line 35, delete "public" and insert "**state educational institution,**".

Page 5, line 36, before "approved" delete "agency,".

Page 5, line 36, delete "public agency," and insert "**state educational institution,**".

Page 6, line 6, delete "public agency" and insert "**state educational institution**".

Page 6, line 11, delete "public agency." and insert "**state educational institution.**".

Page 6, line 12, delete "public agency," and insert "**state educational institution,**".

and when so amended that said bill do pass.

(Reference is to HB 1196 as introduced.)

GUTWEIN, Chair

Committee Vote: yeas 7, nays 4.

