



Reprinted
January 31, 2014

HOUSE BILL No. 1196

DIGEST OF HB 1196 (Updated January 30, 2014 1:21 pm - DI 75)

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.
January 30, 2014, read second time, amended, ordered engrossed.

HB 1196—LS 6679/DI 75



Reprinted
January 31, 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 **Sec. 2. This article expires July 1, 2019.**
11 **Chapter 2. Definitions**
12 **Sec. 1. The definitions in this chapter apply throughout this**
13 **article.**
14 **Sec. 2. "Architect" refers to a person registered under**
15 **IC 25-4-1.**
16 **Sec. 3. "CMc" or "construction manager as constructor" means**

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- 1 a person that provides CMc services.
2 Sec. 4. "CMc contract" refers to a contract for CMc services.
3 Sec. 5. "CMc services" includes the following:
4 (1) Preconstruction phase services, including advice during
5 the preconstruction phase of the project as described in the
6 RFP.
7 (2) Consultation, collaboration, project construction
8 management, and other services as described in the RFP,
9 regarding the construction during and after the design and
10 construction phases. However, the CMc may not procure the
11 project professional architectural and engineering design
12 services. The state educational institution must directly
13 contract for the services of the architect and engineer of
14 record.
15 (3) Development of a construction schedule, estimated cost of
16 construction, and analysis of qualifications of first tier
17 subcontractors.
18 (4) Subject to the CMc contract, a guarantee of:
19 (A) the cost of the project; and
20 (B) the project schedule.
21 Sec. 6. "Engineer" refers to a person registered under
22 IC 25-31-1.
23 Sec. 7. "Evaluation committee" refers to a group of individuals
24 who are responsible for evaluating the responses of offerors to the
25 RFP.
26 Sec. 8. "First tier subcontractor" refers to a subcontractor who
27 contracts directly with the CMc.
28 Sec. 9. "GMP" refers to the guaranteed maximum price for the
29 work as may be established in the CMc contract.
30 Sec. 10. "Offeror" refers to a person who submits a response to
31 an RFP.
32 Sec. 11. "Person" refers to a natural person, a partnership, a
33 limited liability company, or a corporation.
34 Sec. 12. (a) "Project" means the construction, remodeling,
35 rehabilitation, or repair of buildings or other facilities owned by a
36 state educational institution as described in the RFP.
37 (b) The term does not include the construction, remodeling,
38 rehabilitation, or repair of roads, highways, bridges, or potable
39 water or wastewater infrastructure.
40 Sec. 13. "Request for proposals" or "RFP" refers to the process
41 by which a state educational institution solicits persons to provide
42 CMc services under this article.



1 **Chapter 3. Request for Proposals**

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

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

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

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

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

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

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

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

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

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

21 **(4) An overview of the project and selection process, including**
 22 **the following:**

23 **(A) A description of the project, including the size and**
 24 **function of the facility that is the subject of the project, the**
 25 **approximate budget, and the anticipated schedule.**

26 **(B) A description of the selection process, including the**
 27 **process for communication between the state educational**
 28 **institution and the offerors, the schedule for the selection**
 29 **process, and a description of submission requirements.**

30 **(5) The general qualifications for prospective offerors,**
 31 **including:**

32 **(A) appropriate experience with similar projects;**

33 **(B) team experience;**

34 **(C) organizational resources;**

35 **(D) licensing requirements;**

36 **(E) financial strength and bonding capacity;**

37 **(F) an offeror's history of contracting with or hiring**
 38 **minority, women, and veteran business enterprises; and**

39 **(G) litigation and disputes history during the previous ten**
 40 **(10) years.**

41 **(6) The project qualifications for prospective offerors,**
 42 **including:**



- 1 (A) team experience with the facility or building type that
 2 is the subject of the project;
 3 (B) team performance record, including quality, schedule,
 4 and costs of similar projects in the most recent five (5)
 5 years;
 6 (C) proposed team composition and experience working
 7 together;
 8 (D) current capacity to manage the project; and
 9 (E) client references.

10 **Sec. 4. (a) The evaluation committee must consist of at least**
 11 **three (3) of the following individuals:**

- 12 (1) A representative of the state educational institution.
 13 (2) At least two (2) of the following:
 14 (A) An architect registered under IC 25-4, who may be a
 15 employee of the state educational institution.
 16 (B) A professional engineer registered under IC 25-31, who
 17 may be an employee of the state educational institution.
 18 (C) A qualified contractor under IC 4-13.6 or an individual
 19 employed by a qualified contractor.

20 A member of the evaluation committee may not be employed by,
 21 or have a financial or other interest in, an offeror whose proposal
 22 being evaluated.

23 (b) Each offeror selected to meet with the evaluation
 24 committee, based on the evaluation committee's review of the RFP
 25 responses, must be given an equal opportunity to meet and
 26 communicate with the evaluation committee.

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

30 **Sec. 6. The evaluation committee shall conduct a public**
 31 **meeting under IC 5-14-1.5 when making the final selection of the**
 32 **CMc.**

33 **Sec. 7. If the state educational institution determines to**
 34 **proceed with the project, the state educational institution shall**
 35 **enter into negotiations with the offeror whose proposal has been**
 36 **selected by the evaluation committee considering:**

- 37 (1) the responses to the RFP;
 38 (2) any interviews with selected offerors; and
 39 (3) evaluation of fees.

40 **Chapter 4. CMc Contract**

41 **Sec. 1. After the state educational institution has selected an**
 42 **offeror to be the CMc, the state educational institution and that**



1 offeror may negotiate the final terms and conditions of the contract
2 for CMc services for the project.

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

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

10 **Sec. 3. A CMc contract may describe whether the CMc and the**
11 **state educational institution agree to any cost overrun or delay**
12 **damages or early completion incentives.**

13 **Sec. 4. Changes in the contract for CMc services may be made**
14 **as provided in the CMc contract.**

15 **Sec. 5. A state educational institution or CMc may terminate**
16 **the CMc contract before the GMP has been determined, if the RFP**
17 **provides for a GMP.**

18 **Sec. 6. (a) If any of the following occur, the state educational**
19 **institution may proceed as described in subsection (b):**

20 **(1) The CMc contract is terminated under section 6 of this**
21 **chapter.**

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

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

26 **(b) If any of the events described in subsection (a)(1), (a)(2), or**
27 **(a)(3) occur, the state educational institution may do any of the**
28 **following:**

29 **(1) Negotiate a contract with another offeror.**

30 **(2) Award contracts and complete the project under**
31 **IC 5-16.**

32 **(3) Terminate the project.**

33 **Sec. 7. A CMc contract may describe if and when the GMP will**
34 **be determined. If a GMP is established, the contract must describe**
35 **all clarifications and assumptions on which the GMP is based.**

36 **Sec. 8. The CMc may perform a part of the work at the**
37 **discretion of the state educational institution. If the CMc performs**
38 **a part of the work, the CMc may not perform more than twenty**
39 **percent (20%) of the value of the project.**

40 **Chapter 5. CMc Award of First Tier Subcontracts**

41 **Sec. 1. Before a first tier subcontract is awarded, the CMc**
42 **must invite bids from at least three (3) bidders. The CMc must**



1 mail a notice to each bidder at least ten (10) days before the time
2 fixed for receiving bids.

3 **Sec. 2. Each bidder must submit under oath as a part of the bid**
4 **a statement of the following information:**

5 (1) The bidder's professional experience.

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

7 (3) The equipment and personnel available for the
8 performance of the work.

9 (4) The bidder's current financial status.

10 (5) The bidder's best estimate of the cost of each item of
11 work to be performed, including a breakdown of all labor
12 and materials required to complete the work.

13 **Sec. 3. Once the lowest and best bidder is selected, the CMc's**
14 **contract with that bidder must include terms and conditions that**
15 **are designed to accomplish the work at the lowest possible cost to**
16 **the state educational institution.**

17 **Sec. 4. (a) Except as provided in subsection (b), a bid is a public**
18 **record subject to public inspection under IC 5-14-3.**

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

22 **Chapter 6. Bonds**

23 **Sec. 1. The CMc shall execute a payment bond to the state**
24 **educational institution, approved by the state educational**
25 **institution, in an amount equal to the GMP, if established, or the**
26 **proposed construction cost. The payment bond must be**
27 **conditioned for payment by the CMc, the CMc's successors and**
28 **assigns, and by the first tier subcontractors, their successors and**
29 **assigns, of all indebtedness that may accrue to any person for any**
30 **labor or service performed, materials furnished, or service**
31 **rendered in the project. The bond by its terms must be conditioned**
32 **to directly inure to the benefit of subcontractors, laborers,**
33 **suppliers of materials, and those performing service who have**
34 **furnished or supplied labor, material, or service for the project.**

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

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

42 **(c) If the bond is acceptable to the state educational institution,**



1 **the performance bond may provide for incremental bonding in the**
2 **form of multiple or chronological bonds that, when taken as a**
3 **whole, equal the GMP, if established, or the proposed construction**
4 **cost. The surety on the bond shall not be released for a period of**
5 **one (1) year after final settlement with the CMc. A change,**
6 **modification, omission, or addition in and to the terms or**
7 **conditions of the contract, plans, specifications, drawings, or**
8 **profile or any irregularity or defect in the contract or in the**
9 **proceedings preliminary to the letting and awarding of the CMc**
10 **contract does not in any way affect or operate to release or**
11 **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.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1196 be amended to read as follows:

Page 1, between lines 9 and 10, begin a new paragraph and insert: "**Sec. 2. This article expires July 1, 2019.**".

Page 3, between lines 19 and 20, begin a new line block indented and insert:

"(4) An overview of the project and selection process, including the following:

(A) A description of the project, including the size and function of the facility that is the subject of the project, the approximate budget, and the anticipated schedule.

(B) A description of the selection process, including the process for communication between the state educational institution and the offerors, the schedule for the selection process, and a description of submission requirements.

(5) The general qualifications for prospective offerors, including:

(A) appropriate experience with similar projects;

(B) team experience;

(C) organizational resources;

(D) licensing requirements;



- (E) financial strength and bonding capacity;
 - (F) an offeror's history of contracting with or hiring minority, women, and veteran business enterprises; and
 - (G) litigation and disputes history during the previous ten (10) years.
- (6) The project qualifications for prospective offerors, including:
- (A) team experience with the facility or building type that is the subject of the project;
 - (B) team performance record, including quality, schedule, and costs of similar projects in the most recent five (5) years;
 - (C) proposed team composition and experience working together;
 - (D) current capacity to manage the project; and
 - (E) client references."

Page 3, line 20, after "4." insert "(a) The evaluation committee must consist of at least three (3) of the following individuals:

- (1) A representative of the state educational institution.
- (2) At least two (2) of the following:
 - (A) An architect registered under IC 25-4, who may be an employee of the state educational institution.
 - (B) A professional engineer registered under IC 25-31, who may be an employee of the state educational institution.
 - (C) A qualified contractor under IC 4-13.6 or an individual employed by a qualified contractor.

A member of the evaluation committee may not be employed by, or have a financial or other interest in, an offeror whose proposal being evaluated.

(b)".

Page 3, between lines 26 and 27, begin a new paragraph and insert:
"Sec. 6. The evaluation committee shall conduct a public meeting under IC 5-14-1.5 when making the final selection of the CMC."

Page 3, line 27, delete "6" and insert "7".

Page 4, delete lines 4 through 6.

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

Page 4, line 10, delete "5" and insert "4".

Page 4, line 12, delete "6" and insert "5".

Page 4, line 15, delete "7" and insert "6".

Page 4, line 29, delete "8" and insert "7".

Page 4, between lines 31 and 32, begin a new paragraph and insert:



"Sec. 8. The CMc may perform a part of the work at the discretion of the state educational institution. If the CMc performs a part of the work, the CMc may not perform more than twenty percent (20%) of the value of the project."

Page 5, delete lines 5 through 24.

Page 5, line 25, delete "4" and insert "3".

Page 5, line 29, delete "5" and insert "4".

(Reference is to HB 1196 as printed January 28, 2014.)

TRUITT

