



February 19, 2014

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# ENGROSSED HOUSE BILL No. 1196

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DIGEST OF HB 1196 (Updated February 17, 2014 1:25 pm - DI 75)

**Citations Affected:** IC 5-32.

**Synopsis:** Construction managers as constructors. Authorizes public agencies to employ construction managers as constructors for certain construction projects. Provides that the statute expires July 1, 2019.

**Effective:** July 1, 2014.

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## Truitt, Huston, Ober, Klinker

(SENATE SPONSOR — HERSHMAN)

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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.

January 31, 2014, engrossed.

February 3, 2014, read third time, passed. Yeas 58, nays 38.

### SENATE ACTION

February 10, 2014, read first time and referred to Committee on Commerce, Economic Development and Technology.

February 18, 2014, amended, reported favorably — Do Pass.

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EH 1196—LS 6679/DI 75





February 19, 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.

## ENGROSSED HOUSE BILL No. 1196

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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, the applicable public**  
8 **works statute applies to the construction projects of the particular**  
9 **public agency performed 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. "Applicable public works statute" refers to whichever of**  
15 **the following statutes is applicable to public works projects of the**  
16 **public agency:**

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- 1           (1) IC 4-13.6.  
2           (2) IC 5-16.  
3           (3) IC 36-1-12.  
4           (4) Any other statute applicable to the public works projects  
5           of the public agency.  
6           Sec. 3. "Architect" refers to a person registered under  
7           IC 25-4-1.  
8           Sec. 4. "CMc" or "construction manager as constructor" means  
9           a person that provides CMc services.  
10          Sec. 5. "CMc contract" refers to a contract for CMc services.  
11          Sec. 6. "CMc services" includes the following:  
12           (1) Preconstruction phase services, including advice during  
13           the preconstruction phase of the project as described in the  
14           RFP.  
15           (2) Consultation, collaboration, project construction  
16           management, and other services as described in the RFP,  
17           regarding the construction during and after the design and  
18           construction phases. However, the CMc may not procure the  
19           project professional architectural and engineering design  
20           services. The public agency must directly contract for the  
21           services of the architect and engineer of record.  
22           (3) Development of a construction schedule, estimated cost of  
23           construction, and analysis of qualifications of first tier  
24           subcontractors.  
25           (4) Subject to the CMc contract, a guarantee of:  
26           (A) the cost of the project; and  
27           (B) the project schedule.  
28          Sec. 7. "Engineer" refers to a person registered under  
29          IC 25-31-1.  
30          Sec. 8. "Evaluation committee" refers to a group of individuals  
31          who are responsible for evaluating the responses of offerors to the  
32          RFP.  
33          Sec. 9. "First tier subcontractor" refers to a subcontractor who  
34          contracts directly with the CMc.  
35          Sec. 10. "GMP" refers to the guaranteed maximum price for the  
36          work as may be established in the CMc contract.  
37          Sec. 11. "Offeror" refers to a person who submits a response to  
38          an RFP.  
39          Sec. 12. "Person" refers to a natural person, a partnership, a  
40          limited liability company, or a corporation.  
41          Sec. 13. (a) "Project" means the construction, remodeling,  
42          rehabilitation, or repair of buildings or other facilities owned by a



1 public agency as described in the RFP.

2 (b) The term does not include the construction, remodeling,  
3 rehabilitation, or repair of roads, highways, bridges, or potable  
4 water or wastewater infrastructure.

5 Sec. 14. "Public agency" has the meaning set forth in  
6 IC 5-30-1-11.

7 Sec. 15. "Request for proposals" or "RFP" refers to the process  
8 by which a public agency solicits persons to provide CMc services  
9 under this article.

10 Chapter 3. Request for Proposals

11 Sec. 1. If a public agency chooses to use the procedures set forth  
12 in this article when performing a public works project, the public  
13 agency shall select a CMc as provided in this chapter.

14 Sec. 2. (a) The public agency shall issue a request for proposals.

15 (b) Notice of a request for proposals shall be given as other  
16 notices are required to be given under the applicable public works  
17 statute.

18 Sec. 3. (a) A request for proposals must include at least the  
19 following:

20 (1) A statement of the criteria, process, and procedures, which  
21 must include consideration of qualifications and fees, by  
22 which:

23 (A) an offeror will be evaluated;

24 (B) a CMc will be selected; and

25 (C) a CMc contract will be awarded.

26 (2) Information about how the GMP may be established as  
27 part of the contract.

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

29 (b) The statement of the criteria for evaluation of offerors under  
30 subsection (a) must include a statement that each offeror's:

31 (1) history of contracting with or hiring minority, women, and  
32 veteran business enterprises; and

33 (2) good faith efforts to fulfill the state's goals for contracting  
34 with or hiring minority, women, and veteran business  
35 enterprises;

36 will be considered in the evaluation of the offeror's proposal.

37 Sec. 4. Each offeror selected to meet with the evaluation  
38 committee, based on the evaluation committee's review of the RFP  
39 responses, must be given an equal opportunity to meet and  
40 communicate with the evaluation committee.

41 Sec. 5. A summary of the evaluation committee's evaluation of  
42 each offeror is subject to disclosure under IC 5-14-3, but only after



1 the CMc contract has been awarded.

2 Sec. 6. If the public agency determines to proceed with the  
3 project, the public agency shall enter into negotiations with the  
4 offeror whose proposal has been selected by the evaluation  
5 committee considering:

- 6 (1) the responses to the RFP;  
7 (2) any interviews with selected offerors; and  
8 (3) evaluation of fees.

9 Sec. 7. A CMc may perform a part of the work only if:

- 10 (1) the public agency approves of the CMc's performance of  
11 the work;  
12 (2) the CMc is the lowest responsive and responsible bidder;  
13 and  
14 (3) the CMc performs only such work that equals not more  
15 than ten percent (10%) of the total value of the project.

16 Chapter 4. CMc Contract

17 Sec. 1. After the public agency has selected an offeror to be the  
18 CMc, the public agency and that offeror may negotiate the final  
19 terms and conditions of the contract for CMc services for the  
20 project.

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

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

28 Sec. 3. A CMc contract must describe the details of any  
29 adjustment of compensation or other incentives negotiated between  
30 the public agency and the CMc.

31 Sec. 4. A CMc contract may describe whether the CMc and the  
32 public agency agree to any cost overrun or delay damages or early  
33 completion incentives.

34 Sec. 5. Changes in the contract for CMc services may be made  
35 as provided in the CMc contract.

36 Sec. 6. A public agency or CMc may terminate the CMc  
37 contract before the GMP has been determined, if the RFP provides  
38 for a GMP.

39 Sec. 7. (a) If any of the following occur, the public agency may  
40 proceed as described in subsection (b):

- 41 (1) The CMc contract is terminated under section 6 of this  
42 chapter.



- 1           (2) The public agency and the selected offeror are unable to  
2 reach agreement on a CMc contract.
- 3           (3) The selected offeror does not provide the required bonds  
4 as provided in the RFP or this article.
- 5           (b) If any of the events described in subsection (a)(1), (a)(2), or  
6 (a)(3) occur, the public agency may do any of the following:
- 7           (1) Negotiate a contract with another offeror.
- 8           (2) Award contracts and complete the project under any other  
9 applicable public works statute.
- 10          (3) Terminate the project.
- 11          **Sec. 8. A CMc contract may describe if and when the GMP will**  
12 **be determined. If a GMP is established, the contract must describe**  
13 **all clarifications and assumptions on which the GMP is based.**
- 14          **Chapter 5. CMc Award of First Tier Subcontracts**
- 15          **Sec. 1. The CMc shall comply with all notice, bidding,**  
16 **construction, and contract administration requirements relating to**  
17 **public works contracts that the public agency must comply with**  
18 **under the applicable public works statutes.**
- 19          **Sec. 2. A first tier subcontract shall be awarded to the lowest**  
20 **responsive and responsible bidder for that contract.**
- 21          **Sec. 3. Each bidder must submit under oath as a part of the bid**  
22 **a statement of the following information:**
- 23           (1) The bidder's professional experience.
- 24           (2) The bidder's proposed plan for performing the work.
- 25           (3) The equipment and personnel available for the  
26 performance of the work.
- 27           (4) The bidder's current financial status.
- 28           (5) The bidder's best estimate of the cost of each item of work  
29 to be performed, including a breakdown of all labor and  
30 materials required to complete the work.
- 31          **Sec. 4. Once a bidder is selected, the CMc's contract with that**  
32 **bidder must include terms and conditions that are designed to**  
33 **accomplish the work at the lowest possible cost to the public**  
34 **agency.**
- 35          **Sec. 5. (a) Except as provided in subsection (b), a bid is a public**  
36 **record subject to public inspection under IC 5-14-3.**
- 37           (b) A bid is not subject to inspection and copying under  
38 IC 5-14-3 until a contract has been awarded or the solicitation of  
39 bids has been canceled.
- 40          **Chapter 6. Bonds**
- 41          **Sec. 1. The CMc shall execute a payment bond to the public**  
42 **agency, approved by the public agency, in an amount equal to the**



1 GMP, if established, or the proposed construction cost. The  
2 payment bond must be conditioned for payment by the CMc, the  
3 CMc's successors and assigns, and by the first tier subcontractors,  
4 their successors and assigns, of all indebtedness that may accrue to  
5 any person for any labor or service performed, materials  
6 furnished, or service rendered in the project. The bond by its terms  
7 must be conditioned to directly inure to the benefit of  
8 subcontractors, laborers, suppliers of materials, and those  
9 performing service who have furnished or supplied labor, material,  
10 or service for the project.

11 Sec. 2. (a) The CMc shall furnish proof of its ability to obtain a  
12 valid performance bond that is acceptable to the public agency in  
13 an amount equal to the GMP, if established, or the proposed  
14 construction cost.

15 (b) The CMc shall furnish the bond at the time of an early  
16 release construction package or when the GMP is determined and  
17 provided to the public agency.

18 (c) If the bond is acceptable to the public agency, the  
19 performance bond may provide for incremental bonding in the  
20 form of multiple or chronological bonds that, when taken as a  
21 whole, equal the GMP, if established, or the proposed construction  
22 cost. The surety on the bond shall not be released for a period of  
23 one (1) year after final settlement with the CMc. A change,  
24 modification, omission, or addition in and to the terms or  
25 conditions of the contract, plans, specifications, drawings, or  
26 profile or any irregularity or defect in the contract or in the  
27 proceedings preliminary to the letting and awarding of the CMc  
28 contract does not in any way affect or operate to release or  
29 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.

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#### 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;**

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- (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

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COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Economic Development and Technology, to which was referred House Bill No. 1196, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 7 through 16, begin a new paragraph and insert:

**"Sec. 1. Except as provided in this article, the applicable public works statute applies to the construction projects of the particular public agency performed under this article.**

**Sec. 2. This article expires July 1, 2019.**

**Chapter 2. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Applicable public works statute" refers to whichever of the following statutes is applicable to public works projects of the public agency:**

**(1) IC 4-13.6.**

**(2) IC 5-16.**

**(3) IC 36-1-12.**

**(4) Any other statute applicable to the public works projects of the public agency.**

**Sec. 3. "Architect" refers to a person registered under IC 25-4-1.**

**Sec. 4. "CMc" or "construction manager as constructor" means a person that provides CMc services.**

**Sec. 5. "CMc contract" refers to a contract for CMc services.**

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**Sec. 6. "CMc services" includes the following:**

- (1) Preconstruction phase services, including advice during the preconstruction phase of the project as described in the RFP.**
- (2) Consultation, collaboration, project construction management, and other services as described in the RFP, regarding the construction during and after the design and construction phases. However, the CMc may not procure the project professional architectural and engineering design services. The public agency must directly contract for the services of the architect and engineer of record.**
- (3) Development of a construction schedule, estimated cost of construction, and analysis of qualifications of first tier subcontractors.**
- (4) Subject to the CMc contract, a guarantee of:
  - (A) the cost of the project; and**
  - (B) the project schedule.****

**Sec. 7. "Engineer" refers to a person registered under IC 25-31-1.**

**Sec. 8. "Evaluation committee" refers to a group of individuals who are responsible for evaluating the responses of offerors to the RFP.**

**Sec. 9. "First tier subcontractor" refers to a subcontractor who contracts directly with the CMc.**

**Sec. 10. "GMP" refers to the guaranteed maximum price for the work as may be established in the CMc contract.**

**Sec. 11. "Offeror" refers to a person who submits a response to an RFP.**

**Sec. 12. "Person" refers to a natural person, a partnership, a limited liability company, or a corporation.**

**Sec. 13. (a) "Project" means the construction, remodeling, rehabilitation, or repair of buildings or other facilities owned by a public agency as described in the RFP.**

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

**Sec. 14. "Public agency" has the meaning set forth in IC 5-30-1-11.**

**Sec. 15. "Request for proposals" or "RFP" refers to the process by which a public agency solicits persons to provide CMc services under this article.**

### **Chapter 3. Request for Proposals**



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

**Sec. 2. (a) The public agency shall issue a request for proposals.**

**(b) Notice of a request for proposals shall be given as other notices are required to be given under the applicable public works statute.**

**Sec. 3. (a) A request for proposals must include at least the following:**

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

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

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

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

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

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

**(b) The statement of the criteria for evaluation of offerors under subsection (a) must include a statement that each offeror's:**

**(1) history of contracting with or hiring minority, women, and veteran business enterprises; and**

**(2) good faith efforts to fulfill the state's goals for contracting with or hiring minority, women, and veteran business enterprises;**

**will be considered in the evaluation of the offeror's proposal.**

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

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

**Sec. 6. If the public agency determines to proceed with the project, the public agency shall enter into negotiations with the offeror whose proposal has been selected by the evaluation committee considering:**

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

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

**(3) evaluation of fees.**



**Sec. 7. A CMc may perform a part of the work only if:**

- (1) the public agency approves of the CMc's performance of the work;**
- (2) the CMc is the lowest responsive and responsible bidder; and**
- (3) the CMc performs only such work that equals not more than ten percent (10%) of the total value of the project.**

**Chapter 4. CMc Contract**

**Sec. 1. After the public agency has selected an offeror to be the CMc, the public agency and that offeror may negotiate the final terms and conditions of the contract for CMc services for the project.**

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

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

**Sec. 3. A CMc contract must describe the details of any adjustment of compensation or other incentives negotiated between the public agency and the CMc.**

**Sec. 4. A CMc contract may describe whether the CMc and the public agency agree to any cost overrun or delay damages or early completion incentives.**

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

**Sec. 6. A public agency or CMc may terminate the CMc contract before the GMP has been determined, if the RFP provides for a GMP.**

**Sec. 7. (a) If any of the following occur, the public agency may proceed as described in subsection (b):**

- (1) The CMc contract is terminated under section 6 of this chapter.**
- (2) The public agency and the selected offeror are unable to reach agreement on a CMc contract.**
- (3) The selected offeror does not provide the required bonds as provided in the RFP or this article.**

**(b) If any of the events described in subsection (a)(1), (a)(2), or (a)(3) occur, the public agency may do any of the following:**

- (1) Negotiate a contract with another offeror.**
- (2) Award contracts and complete the project under any**





other applicable public works statute.

(3) Terminate the project.

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

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

**Sec. 1.** The CMc shall comply with all notice, bidding, construction, and contract administration requirements relating to public works contracts that the public agency must comply with under the applicable public works statutes.

**Sec. 2.** A first tier subcontract shall be awarded to the lowest responsive and responsible bidder for that contract.

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

- (1) The bidder's professional experience.
- (2) The bidder's proposed plan for performing the work.
- (3) The equipment and personnel available for the performance of the work.
- (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. 4.** Once a 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 public agency.

**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 public agency, approved by the public agency, 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 rendered in the project. The bond by its terms must be conditioned to directly inure to the benefit of subcontractors, laborers, suppliers of materials, and those



performing service who have furnished or supplied labor, material, or service for the project.

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

**(b) The CMc shall furnish the bond at the time of an early release construction package or when the GMP is determined and provided to the public agency.**

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

Delete pages 2 through 7.

and when so amended that said bill do pass.

(Reference is to HB 1196 as reprinted January 31, 2014.)

BUCK, Chairperson

Committee Vote: Yeas 7, Nays 0.

