

SENATE BILL No. 261

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-32.

Synopsis: Construction managers as constructors. Authorizes public agencies to employ construction managers as constructors for certain construction projects.

Effective: July 1, 2014.

Hershman, Banks

January 13, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.



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.

SENATE BILL No. 261

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 **Chapter 2. Definitions**

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

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

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



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



1 construction, remodeling, or rehabilitation of the buildings or
2 other facilities owned by the public agency.

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

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

8 **Chapter 3. Request for Proposals**

9 Sec. 1. A public agency shall select a CMc as provided in this
10 chapter.

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

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

15 Sec. 3. A request for proposals must include at least the
16 following:

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

20 (A) an offeror will be evaluated;

21 (B) a CMc will be selected; and

22 (C) a CMc contract will be awarded.

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

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

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

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

33 Sec. 6. If the public agency determines to proceed with the
34 project, the public agency shall enter into negotiations with the
35 offeror whose proposal has been selected by the evaluation
36 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 public agency has selected an offeror to be the
42 CMc, the public agency and that offeror may negotiate the final



1 terms and conditions of the contract for CMc services for the
2 project.

3 **Sec. 2. (a) Subject to this article, the CMc contract must require**
4 **the CMc to provide payment and performance bonds in an amount**
5 **not less than the estimated construction costs of the project or the**
6 **GMP, if 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 must describe the details of any**
11 **adjustment of compensation or other incentives negotiated between**
12 **the public agency and the CMc.**

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

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

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

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

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

25 **(2) The public agency and the selected offeror are unable to**
26 **reach agreement on a CMc contract.**

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

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

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

32 **(2) Award contracts and complete the project under any other**
33 **applicable public works statute.**

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

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

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

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



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

- 3 **(1) The bidder's professional experience.**
 4 **(2) The bidder's proposed plan for performing the work.**
 5 **(3) The equipment and personnel available for the**
 6 **performance of the work.**
 7 **(4) The bidder's current financial status.**
 8 **(5) The bidder's best estimate of the cost of each item of work**
 9 **to be performed, including a breakdown of all labor and**
 10 **materials required to complete the work.**

11 **Sec. 3. After bids have been submitted to the CMc, the CMc may**
 12 **contract only with the lowest and best bidder, as determined by the**
 13 **CMc in consultation with the public agency. For purposes of**
 14 **determining the lowest and best bid under this subsection, the**
 15 **following, in addition to the bid price, may be considered:**

- 16 **(1) Whether the bidder has submitted a bid that conforms in**
 17 **all material respects to the specifications.**
 18 **(2) Whether the bidder has submitted a bid that complies**
 19 **specifically with the invitation to bid and the instructions to**
 20 **bidders.**
 21 **(3) Whether the bidder has complied with all applicable**
 22 **statutes, ordinances, resolutions, or rules pertaining to the**
 23 **award of a public contract.**
 24 **(4) The ability and capacity of the bidder to perform the**
 25 **work.**
 26 **(5) The integrity, character, and reputation of the bidder.**
 27 **(6) The competence and experience of the bidder.**
 28 **(7) Other criteria that the CMc considers appropriate after**
 29 **consultation with the public agency.**

30 **Sec. 4. Once the lowest and best bidder is selected, the CMc's**
 31 **contract with that bidder must include terms and conditions that**
 32 **are designed to accomplish the work at the lowest possible cost to**
 33 **the public agency.**

34 **Chapter 6. Bonds**

35 **Sec. 1. The CMc shall execute a payment bond to the public**
 36 **agency, approved by the public agency, in an amount equal to the**
 37 **GMP, if established, or the proposed construction cost. The**
 38 **payment bond must be conditioned for payment by the CMc, the**
 39 **CMc's successors and assigns, and by the first tier subcontractors,**
 40 **their successors and assigns, of all indebtedness that may accrue to**
 41 **any person for any labor or service performed, materials**
 42 **furnished, or service rendered in the project. The bond by its terms**



1 must be conditioned to directly inure to the benefit of
2 subcontractors, laborers, suppliers of materials, and those
3 performing service who have furnished or supplied labor, material,
4 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 public agency in
7 an amount equal to the GMP, if established, or the proposed
8 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 public agency.

12 (c) If the bond is acceptable to the public agency, the
13 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.

