



Reprinted
February 4, 2014

SENATE BILL No. 261

DIGEST OF SB 261 (Updated February 3, 2014 4:23 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.

Hershman, Banks, Taylor

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

January 27, 2014, amended, reported favorably — Do Pass.

February 3, 2014, read second time, amended, ordered engrossed.

SB 261—LS 6438/DI 75



Reprinted
February 4, 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.

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 **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:**

SB 261—LS 6438/DI 75



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

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

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

40 (1) the responses to the RFP;

41 (2) any interviews with selected offerors; and

42 (3) evaluation of fees.



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

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

8 **Chapter 4. CMc Contract**

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

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

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

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

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

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

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

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

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

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

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



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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



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

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

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

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



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Economic Development and Technology, to which was referred Senate Bill No. 261, 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 2, line 17, after "phases." insert "**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.**".

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

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 2.

Page 3, line 9, delete "A" and insert "**If a public agency chooses to use the procedures set forth in this article when performing a public works project, the**".

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

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."

and when so amended that said bill do pass.

(Reference is to SB 261 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 7, Nays 0.



SENATE MOTION

Madam President: I move that Senate Bill 261 be amended to read as follows:

Page 3, between lines 41 and 42, begin a new paragraph and insert:

"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 only performs such work that equals not more than ten percent (10%) of the total value of the project."

(Reference is to SB 261 as printed January 28, 2014.)

HERSHMAN

SENATE MOTION

Madam President: I move that Senate Bill 261 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."

(Reference is to SB 261 as printed January 28, 2014.)

HERSHMAN

SENATE MOTION

Madam President: I move that Senate Bill 261 be amended to read as follows:

Page 4, delete lines 41 through 42, begin a new paragraph and insert:

"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."

Page 5, delete lines 1 through 2.

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

SB 261—LS 6438/DI 75



Page 5, delete lines 13 through 31.

Page 5, line 32, delete "the lowest and best" and insert "a".

(Reference is to SB 261 as printed January 28, 2014.)

HERSHMAN

