

HOUSE BILL No. 1207

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-32.

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

Effective: July 1, 2013.

Truitt

January 10, 2013, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1207



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 **2013]:**

4 **ARTICLE 32. EMPLOYMENT OF CONSTRUCTION**
5 **MANAGERS AS CONSTRUCTORS FOR PROJECTS OF STATE**
6 **EDUCATIONAL INSTITUTIONS**

7 **Chapter 1. General Provisions**

8 **Sec. 1. A state educational institution may award contracts for**
9 **construction projects under this article if the capital project value**
10 **of the construction project is at least ten million dollars**
11 **(\$10,000,000).**

12 **Sec. 2. Except as provided in this article, IC 5-16 applies to the**
13 **construction projects of a state educational institution performed**
14 **under this article.**

15 **Chapter 2. Definitions**

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



1 **Sec. 2. "Architect"** refers to a person registered under
2 **IC 25-4-1.**

3 **Sec. 3. "CMc" or "construction manager as constructor"** means
4 **a person that provides CMc services.**

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

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

7 (1) **Preconstruction phase services, including advice during**
8 **the preconstruction phase of the project as described in the**
9 **RFP.**

10 (2) **Consultation, collaboration, project construction**
11 **management, and other services as described in the RFP,**
12 **regarding the construction during and after the design and**
13 **construction phases.**

14 (3) **Development of a construction schedule, estimated cost of**
15 **construction, and quality analysis.**

16 (4) **A guarantee of:**

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

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

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

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

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

26 **Sec. 9. (a) "GMP"** refers to the guaranteed maximum price
27 **established as provided in this article. The GMP consists of at least**
28 **the following elements:**

29 (1) **The cost of performing the work.**

30 (2) **The CMc's general conditions costs.**

31 (3) **The CMc's contingency costs.**

32 (4) **The CMc's fee during the construction phase.**

33 (b) **A GMP does not include the cost of preconstruction services.**

34 **Sec. 10. "Offeror"** refers to a person who submits a response to
35 **an RFP.**

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

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

41 (b) **The term does not include the construction, remodeling,**
42 **rehabilitation, or repair of a road, highway, or bridge unless**

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1 construction, remodeling, rehabilitation, or repair of the road,
 2 highway, or bridge is naturally and reasonably related to the
 3 construction, remodeling, or rehabilitation of the buildings or
 4 other facilities owned by the state educational institution.

5 Sec. 13. "Request for proposals" or "RFP" refers to the process
 6 by which a state educational institution solicits persons to provide
 7 CMc services under this article.

8 **Chapter 3. Request for Proposals**

9 Sec. 1. A state educational institution shall select a CMc as
 10 provided in this chapter.

11 Sec. 2. (a) The state educational institution shall issue a request
 12 for proposals.

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

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) Identification of the individuals, either by name or by title,
 24 who will serve on the evaluation committee.

25 (3) A statement of any limits on the amount of work the CMc
 26 can self perform as a first tier subcontractor.

27 (4) The following information about the GMP:

28 (A) A statement that the time for submission of the GMP
 29 will be set during negotiation of the CMc contract.

30 (B) Whether the CMc will share any of the savings in any
 31 of the components of the GMP.

32 (C) How work covered by the construction bid packages
 33 awarded before the release of final construction documents
 34 will be factored into the GMP.

35 (5) A description of the insurance requirements for the CMc.

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

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

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1 **Sec. 6.** If the state educational institution determines to proceed
 2 with the project, the state educational institution shall enter into
 3 negotiations with the offeror whose proposal has been selected by
 4 the evaluation committee considering:

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

8 **Chapter 4. CMc Contract**

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

13 **Sec. 2. (a)** Subject to IC 5-32-6, the CMc contract must require
 14 the CMc to provide payment and performance bonds in an amount
 15 not less than the GMP at the times provided by the RFP.

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

19 **Sec. 3.** The CMc may perform a portion of the work as a first
 20 tier subcontractor only if the CMc is the lowest responsive and
 21 responsible bidder for the work to be done.

22 **Sec. 4.** A CMc contract must describe the details of any
 23 adjustment of compensation or other incentives negotiated between
 24 the state educational institution and the CMc.

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

27 **Sec. 6.** A state educational institution or CMc may terminate the
 28 CMc contract before the GMP has been determined.

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

- 31 (1) The CMc contract is terminated under section 6 of this
 32 chapter.
 33 (2) The state educational institution and the selected offeror
 34 are unable to reach agreement on a CMc contract.
 35 (3) The selected offeror does not provide the required bonds
 36 as provided in the RFP or IC 5-32-6.

37 **(b)** If any of the events described in subsection (a)(1), (a)(2), and
 38 (a)(3) occur, the state educational institution may do any of the
 39 following:

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

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(3) Terminate the project.
Sec. 8. A CMc contract must describe when the GMP will be determined. The GMP must describe all clarifications and assumptions on which the GMP is based.

Chapter 5. CMc Duties

Sec. 1. The CMc shall comply with all notice, bidding, construction, and contract administration requirements relating to public works contracts that a state educational institution must comply with under IC 5-16 or other applicable statutes.

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

Chapter 6. Bonds

Sec. 1. (a) The CMc shall execute a bond to the state, approved by the state educational institution in an amount equal to the GMP. The bond shall 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, which may accrue to any person for any labor or service performed, materials furnished, or service rendered in the project. The bond by its terms shall 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.

(b) Each first tier subcontractor shall execute a bond to the CMc, approved by the state educational institution in an amount equal to the total subcontract price. The bond shall be conditioned for payment by the first tier subcontractor, the first tier subcontractor's successors and assigns, and by the first tier subcontractor's subcontractors, their successors and assigns, of all indebtedness, which may accrue to any person for any labor or service performed, materials furnished, or service rendered in the project. The bond by its terms shall 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) At the time of entering into the CMc contract, the CMc shall furnish a valid performance bond that is acceptable to the state educational institution in an amount equal to the GMP. If the bond is acceptable to the state educational institution, the performance bond may provide for incremental bonding in the form of multiple or chronological bonds which, when taken as a whole, equal the GMP. The surety on the bond shall not be released

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1 for a period of one (1) year after final settlement with the CMC. A
2 change, modification, omission, or addition in and to the terms or
3 conditions of the contract, plans, specifications, drawings, or
4 profile or any irregularity or defect in the contract or in the
5 proceedings preliminary to the letting and awarding the CMC
6 contract does not in any way affect or operate to release or
7 discharge the surety.
8 (b) At the time of entering into a first tier subcontract, the first
9 tier subcontractor shall furnish to the CMC a valid performance
10 bond that is acceptable to the state educational institution in an
11 amount equal to the total subcontract price. If the bond is
12 acceptable to the state educational institution, the performance
13 bond may provide for incremental bonding in the form of multiple
14 or chronological bonds which, when taken as a whole, equal the
15 total subcontract price. The surety on the bond shall not be
16 released for a period of one (1) year after final settlement with the
17 first tier subcontractor. A change, modification, omission, or
18 addition in and to the terms or conditions of the contract, plans,
19 specifications, drawings, or profile or any irregularity or defect in
20 the contract or in the proceedings preliminary to the letting and
21 awarding the contract does not in any way affect or operate to
22 release or discharge the surety.

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