

HOUSE BILL No. 2267

By Committee on Appropriations

2-9

1 AN ACT concerning alternative project delivery; relating to notice
2 requirements and selection procedure; amending K.S.A. 2014 Supp.
3 72-6760f, 75-37,143, 75-37,144, 75-37,145, 76-7,131 and 76-7,132 and
4 repealing the existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2014 Supp. 72-6760f is hereby amended to read as
8 follows: 72-6760f. Construction management at-risk project delivery
9 procedures shall be conducted as follows:

10 (a) The board shall determine the scope and level of detail required to
11 permit a qualified firm to submit construction management at-risk
12 proposals in accordance with the request for proposals given the nature of
13 the project.

14 (b) Prior to completion of the construction documents, or as early as
15 during the initiation of the project, the construction manager or general
16 contractor shall be selected. The project design professional may be
17 employed or retained by the board to assist in the selection process.

18 (c) The board shall publish a notice of the request for qualifications
19 and proposals for the required project services at least 15 days prior to the
20 commencement of such requests in the official newspaper of the school
21 district and with a statewide school board or construction industry
22 association website in accordance with K.S.A. 64-101, and amendments
23 thereto, *to the associated general contractors of Kansas* and in such other
24 appropriate manner as may be determined by the board.

25 (d) The board shall solicit proposals in a three stage qualifications
26 based selection process. Phase I shall be the solicitation of qualifications
27 and prequalifying a minimum of three but no more than five firms to
28 advance to phase II. Phase II shall be the solicitation of a request for
29 proposal for the project, and phase III shall include an interview with each
30 proposer to present their qualifications and answer questions.

31 (1) Phase I shall require all firms to submit a statement of
32 qualifications which shall include, but not be limited to:

33 (A) Similar project experience;

34 (B) experience in this type of project delivery system;

35 (C) references from design professionals and owners from previous
36 projects;

1 (D) description of the construction manager or general contractor's
2 project management approach; and

3 (E) bonding capacity. Firms submitting a statement of qualifications
4 shall be capable of providing a public works bond in accordance with
5 K.S.A. 60-1111, and amendments thereto, and shall present evidence of
6 such bonding capacity to the board with their statement—~~or~~ of
7 qualifications. If a firm fails to present such evidence, such firm shall be
8 deemed unqualified for selection under this subsection.

9 (2) The board shall evaluate the qualifications of all firms in
10 accordance with the instructions of the request for qualifications. The
11 board shall prepare a short list containing a minimum of three and
12 maximum of five qualified firms, which have the best and most relevant
13 qualifications to perform the services required of the project, to participate
14 in phase II of the selection process. If the board receives qualifications
15 from less than four firms, all firms shall be invited to participate in phase
16 II of the selection process. The board shall have discretion to disqualify
17 any firm that, in the board's opinion, lacks the minimal qualifications
18 required to perform the work.

19 (3) Phase II of the process shall be conducted as follows:

20 (A) Prequalified firms selected in phase I shall be given a request for
21 proposal. The request for proposal shall require all firms to submit a more
22 in depth response including, but not be limited to:

23 (i) Company overview;

24 (ii) experience or references, or both, relative to the project under
25 question;

26 (iii) resumes of proposed project personnel;

27 (iv) overview of preconstruction services;

28 (v) overview of construction planning; *and*

29 (vi) proposed safety plan;

30 ~~(vii)~~(B) *All prequalified firms shall submit proposed fees in a format
31 required by the department of administration, including fees for
32 preconstruction services, fees for general conditions, fees for overhead and
33 profit profits directly and only to the secretary of administration. The
34 secretary of administration shall score and rank the proposals for the best
35 value and report such findings to the selection recommendation committee
36 after all other interviews and scoring have been completed. The
37 recommendations of the secretary of administration to the selection
38 recommendation committee shall be open for public review. The scores on
39 fees and profits shall not account for more than 25% of the total possible
40 score.*

41 (4) Phase III shall be conducted as follows:

42 (A) Once all proposals have been submitted, the selection
43 recommendation committee shall interview each of the firms in executive

1 session, allowing the competing firms to present their proposed team
2 members, qualifications, project plan and to answer questions. All other
3 discussion and any action taken in the selection process shall be held in an
4 open meeting. Interview scores shall not account for more than 50% of the
5 total possible score.

6 (B) The selection recommendation committee shall select the firm
7 providing the best value based on the proposal criteria ~~and~~, weighting
8 factors utilized to emphasize important elements of each project for
9 approval by the board *and recommendation of the secretary of*
10 *administration*. All scoring criteria and weighting factors shall be
11 identified by the board in the request for proposal instructions to firms.
12 The selection recommendation committee shall proceed to negotiate with
13 and attempt to enter into a construction management at-risk contract with
14 the firm receiving the best total score to serve as the construction manager
15 or general contractor for the project. Should the selection recommendation
16 committee be unable to negotiate a satisfactory contract with the firm
17 scoring the best total score, negotiations with that firm shall be terminated,
18 and the committee shall undertake negotiations with the firm with the next
19 best total score, in accordance with this act.

20 (C) If the selection recommendation committee determines, that it is
21 not in the best interest of the board to proceed with the project pursuant to
22 the proposals offered, the selection recommendation committee shall reject
23 all proposals. If all proposals are rejected, the board may solicit new
24 proposals using different design criteria, budget constraints or
25 qualifications.

26 (D) The construction management at-risk contract for a project shall
27 be prepared by the board and entered into between the board and the firm
28 performing such construction management at-risk services. A construction
29 management at-risk contract utilizing a cost plus guaranteed maximum
30 price contract value shall return all savings under the guaranteed
31 maximum price to the school district.

32 (E) The board or the construction manager at-risk, at the board's
33 discretion shall publish a construction services bid notice in the official
34 newspaper of the school district and website of a statewide school board
35 association or construction industry association and in such other
36 appropriate manner for the construction manager or general contractor as
37 may be determined by the board. Each construction services bid notice
38 shall include the request for bids and other bidding information prepared
39 by the construction manager or general contractor and the board. The
40 board may allow the construction manager or general contractor to self-
41 perform construction services provided the construction manager or
42 general contractor submits a sealed bid proposal under the same conditions
43 as all other competing firms. At the time for opening the bids, the

1 construction manager or general contractor shall evaluate the bids and
2 shall determine the lowest responsible bidder except in the case of self-
3 performed work for which the board shall determine the lowest
4 responsible bidder. The construction manager or general contractor shall
5 enter into a contract with each firm performing the construction services
6 for the project and make a public announcement of each firm selected at
7 the first school board meeting following the selection.

8 Sec. 2. K.S.A. 2014 Supp. 75-37,143 is hereby amended to read as
9 follows: 75-37,143. (a) Notwithstanding any other provision of the law to
10 the contrary, the state building advisory commission is hereby authorized
11 to institute an alternative project delivery program whereby construction
12 management at-risk or building design-build procurement processes may
13 be utilized on state agency public projects pursuant to this act. This
14 authorization for construction management at-risk and building design-
15 build procurement shall be for the sole and exclusive use of planning,
16 acquiring, designing, building, equipping, altering, repairing, improving,
17 or demolishing any structure or appurtenance thereto, including facilities,
18 utilities, or other improvements to any real property, but shall not include
19 highways, roads, bridges, dams, turnpikes or related structures, or stand-
20 alone parking lots.

21 (b) To assist in the procurement of alternative project delivery
22 construction services as defined under this act, the secretary of
23 administration shall encourage firms engaged in the performance of
24 construction services to submit annually to the secretary of administration
25 and to the state building advisory commission a statement of qualifications
26 and performance data. Each statement shall include data relating to the
27 following:

28 (1) The firm's capacity and experience, including experience on
29 similar or related projects;

30 (2) the capabilities and other qualifications of the firm's personnel;
31 and

32 (3) such other information related to qualifications and capability of
33 the firm to perform construction services for projects as may be described
34 by the secretary of administration.

35 (c) The state building advisory commission shall approve those
36 projects for which the use of alternative project delivery procurement
37 process is appropriate. In making such determination, the commission
38 shall consider the following factors:

39 (1) The likelihood that the alternative project delivery method of
40 procurement selected will serve the public interest by providing substantial
41 savings of time or money over the traditional design-bid-build delivery
42 process.

43 (2) The ability to overlap design and construction phases is required

1 to meet the needs of the end user.

2 (3) The use of an accelerated schedule is required to make repairs
3 resulting from an emergency situation.

4 (4) The project presents significant phasing or technical complexities,
5 or both, requiring the use of an integrated team of designers and
6 constructors to solve project challenges during the design or
7 preconstruction phase.

8 (5) The use of an alternative project delivery method will not
9 encourage favoritism in awarding the public contract or substantially
10 diminish competition for the public contract.

11 (d) When a request is made for alternative delivery procurement by
12 an agency, the director shall publish a notice in the Kansas register *and*
13 *notify all active general contractor industry associations in the state* that
14 the state building advisory commission will be holding a public hearing
15 with the opportunity for comment on such request. Notice shall be
16 published *and notifications shall be made* at least 15 days prior to the
17 hearing.

18 (e) Notwithstanding the provisions of K.S.A. 75-3738 through 75-
19 3744, and amendments thereto, if the state building advisory commission
20 finds that the project does not qualify for the alternative project delivery
21 methods included under this act, then the construction services for such
22 project shall be obtained pursuant to competitive bids and all contracts for
23 construction services shall be awarded to the lowest responsible bidder in
24 accordance with procurement procedures determined and administered by
25 the division of facilities management which shall be consistent with the
26 provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

27 (f) The secretary of administration may adopt regulations pursuant to
28 K.S.A. 75-3783, and amendments thereto, for the conduct of the
29 alternative project delivery process.

30 (g) When it is necessary in the judgment of the agency to obtain
31 project services for a particular project as described under this act, the
32 director shall publish a notice of the request for qualifications and
33 proposals for the required project services at least 15 days prior to the
34 commencement of such request in the Kansas register in accordance with
35 K.S.A. 75-430a, and amendments thereto, *notify all active general*
36 *contractor industry associations in the state of such request at the same*
37 *time of the notice* and *publish* in such other appropriate manner as may be
38 determined by the agency.

39 Sec. 3. K.S.A. 2014 Supp. 75-37,144 is hereby amended to read as
40 follows: 75-37,144. Construction management at-risk project delivery
41 procedures shall be conducted as follows:

42 (a) The director shall determine the scope and level of detail required
43 to permit qualified construction manager or general contractors to submit

1 construction management at-risk proposals in accordance with the request
2 for proposals given the nature of the project.

3 (b) Prior to completion of the construction documents, but as early as
4 during the schematic design phase, the construction manager or general
5 contractor shall be selected. The project design professional may be
6 employed or retained by the agency to assist in the selection process. The
7 design professional shall be selected and its contract negotiated in
8 compliance with K.S.A 75-1257 and 75-5804, and amendments thereto.

9 (c) The agency shall publish a notice of the request for qualifications
10 and proposals for the required project services at least 15 days prior to the
11 commencement of such requests in the Kansas register in accordance with
12 K.S.A. 75-430a, and amendments thereto, *notify all active general*
13 *contractor industry associations in the state of such request at the same*
14 *time of the notice* and *publish* in such other appropriate manner as may be
15 determined by the agency.

16 (d) The director shall solicit proposals in a three stage qualifications
17 based selection process. Phase I shall be the solicitation of qualifications
18 and prequalifying a minimum of three but no more than five construction
19 manager or general contractors to advance to phase II. Phase II shall be the
20 solicitation of a request for proposal for the project, and phase III shall
21 include an interview with each proposer to present their qualifications and
22 answer questions.

23 (1) Phase I shall require all proposers to submit a statement of
24 qualifications which shall include, but not be limited to:

25 (A) Similar project experience;
26 (B) experience in this type of project delivery system;
27 (C) references from design professionals and owners from previous
28 projects;

29 (D) description of the construction manager or general contractor's
30 project management approach;

31 (E) financial statements; and

32 (F) bonding capacity. Firms submitting a statement of qualifications
33 shall be capable of providing a public works bond in accordance with
34 K.S.A. 60-1111, and amendments thereto, and shall present evidence of
35 such bonding capacity to the state building advisory commission with their
36 statement of qualifications. If a firm fails to present such evidence, such
37 firm shall be deemed unqualified for selection under this subsection.

38 (2) The state building advisory commission shall evaluate the
39 qualifications of all proposers in accordance with the instructions of the
40 request for qualifications. The state building advisory commission shall
41 prepare a short list containing a minimum of three and maximum of five
42 qualified firms, which have the best and most relevant qualifications to
43 perform the services required of the project, to participate in phase II of

1 the selection process. If three qualified proposers cannot be identified, the
2 selection process shall cease. The state building advisory commission shall
3 have discretion to disqualify any proposer that, in the state building
4 advisory commission's opinion, lacks the minimal qualifications required
5 to perform the work.

6 (3) Phase II of the process shall be conducted as follows:

7 (A) Prequalified firms selected in phase I shall be given a request for
8 proposal. The request for proposal shall require all proposers to submit a
9 more in depth response including, but not be limited to:

10 (i) Company overview;

11 (ii) experience or references, or both, relative to the project under
12 question;

13 (iii) resumes of proposed project personnel;

14 (iv) overview of preconstruction services;

15 (v) overview of construction planning; *and*

16 (vi) proposed safety plan;

17 ~~(vii)~~(B) *All proposers shall submit proposed fees, in a format*
18 *required by the department of administration including fees for*
19 *preconstruction services, fees for general conditions, fees for overhead and*
20 *profit and fees for self-performed work, if any, directly and only to the*
21 *secretary of administration. The secretary of administration shall consider*
22 *and make recommendations to the negotiating committee on the fees. The*
23 *recommendations of the secretary of administration to the negotiating*
24 *committee shall be open for public view. The scores on fees shall not*
25 *account for more than 25% of the total possible score.*

26 (4) Phase III shall be conducted as follows:

27 (A) Once all proposals have been submitted, the negotiating
28 committee shall interview all of the proposers, allowing the competing
29 firms to present their proposed team members, qualifications, project plan
30 and to answer questions. Interview scores shall not account for more than
31 50% of the total possible score.

32 (B) The negotiating committee shall select the firm providing the best
33 value based on the proposal criteria ~~and~~, weighting factors utilized to
34 emphasize important elements of each project *and recommendation of the*
35 *secretary of administration. All scoring criteria and weighting factors shall*
36 *be identified by the agency in the request for proposal instructions to*
37 *proposers. The negotiating committee shall proceed to negotiate with and*
38 *attempt to enter into contract with the firm receiving the best total score to*
39 *serve as the construction manager or general contractor for the project.*
40 *The negotiations shall proceed in accordance with the same process with*
41 *which negotiations are undertaken to contract with design professionals*
42 *under K.S.A. 75-1250 and 75-5804, and amendments thereto, to the extent*
43 *that such provisions are consistent with this act. Should the negotiating*

1 committee be unable to negotiate a satisfactory contract with the firm
2 scoring the best total score, negotiations with that firm shall be terminated,
3 and the committee shall undertake negotiations with the firm with the next
4 best total score, in accordance with this act.

5 (C) If the negotiating committee determines, that it is not in the best
6 interest of the agency to proceed with the project pursuant to the proposals
7 offered, the negotiating committee shall reject all proposals. If all
8 proposals are rejected, the director may solicit new proposals using
9 different design criteria, budget constraints or qualifications.

10 (D) The contract to perform construction management at-risk services
11 for a project shall be prepared by the secretary of administration and
12 entered into between the agency and the firm performing such construction
13 management at-risk services. A construction management at-risk contract
14 utilizing a cost plus guaranteed maximum price contract value shall return
15 all savings under the guaranteed maximum price to the agency.

16 (E) The director shall publish a construction services bid notice in the
17 Kansas register and in such other appropriate manner for the construction
18 manager or general contractor as may be determined by the state agency.
19 Each construction services bid notice shall include the request for bids and
20 other bidding information prepared by the construction manager or general
21 contractor and the state agency with the assistance of the division of
22 facilities management. The current statements of qualifications of and
23 performance data on the firms submitting bid proposals shall be made
24 available to the construction manager or general contractor and the state
25 agency by the state building advisory commission along with all
26 information and evaluations developed regarding such firms by the
27 secretary of administration under K.S.A. 75-3783, and amendments
28 thereto. The agency may allow the construction manager or general
29 contractor to self-perform construction services provided the construction
30 manager or general contractor submits a bid proposal under the same
31 conditions as all other competing firms. If a firm submitting a bid proposal
32 fails to present such evidence, such firm shall be deemed unqualified for
33 selection under this subsection. At the time for opening the bids, the
34 construction manager or general contractor shall evaluate the bids and
35 shall determine the lowest responsible bidder except in the case of self-
36 performed work for which the agency and the department of
37 administration shall determine the lowest responsible bidder. The
38 construction manager or general contractor shall enter into a contract with
39 each firm performing the construction services for the project and make a
40 public announcement of each firm selected in accordance with this
41 subsection.

42 Sec. 4. K.S.A. 2014 Supp. 75-37,145 is hereby amended to read as
43 follows: 75-37,145. Building design-build project delivery procedures

1 shall be conducted as follows:

2 (a) The director shall determine the scope and level of detail required
3 to permit qualified persons to submit building design-build proposals in
4 accordance with the request for proposals given the nature of the project.

5 (b) Notice of requests for proposals shall be advertised in accordance
6 with K.S.A. 75-430a, and amendments thereto. The director shall publish a
7 notice *and notify all active general contractor industry associations in the*
8 *state* of a request for proposal with a description of the project, the
9 procedures for submittal and the selection criteria to be used.

10 (c) The director shall establish in the request for proposal a time,
11 place and other specific instructions for the receipt of proposals. Proposals
12 not submitted in strict accordance with such instructions shall be subject to
13 rejection.

14 (d) A request for proposals shall be prepared for each building design-
15 build contract containing at minimum the following elements:

16 (1) The procedures to be followed for submitting proposals, the
17 criteria for evaluation of proposals and their relative weight, and the
18 procedures for making awards.

19 (2) The proposed terms and conditions for the building design-build
20 contract.

21 (3) The design criteria package.

22 (4) A description of the drawings, specifications or other information
23 to be submitted with the proposal, with guidance as to the form and level
24 of completeness of the drawings, specifications or other information that
25 will be acceptable.

26 (5) A schedule for planned commencement and completion of the
27 building design-build contract.

28 (6) Budget limits for the building design-build contract, if any.

29 (7) Requirements, including any available ratings for performance
30 bonds, payment bonds and insurance.

31 (8) Any other information that the agency at its discretion chooses to
32 supply, including without limitation, surveys, soil reports, drawings of
33 existing structures, environmental studies, photographs or references to
34 public records.

35 (e) The director shall solicit proposals in a three-stage process. Phase
36 I shall be the solicitation of qualifications of the building design-build
37 team. Phase II shall be the solicitation of a technical proposal including
38 conceptual design for the project and phase III shall be the proposal of the
39 construction cost.

40 (1) The state building advisory commission shall review the
41 submittals of the proposers and assign points to each proposal as
42 prescribed in the instructions of the request for proposal.

43 (2) Phase I shall require all proposers to submit a statement of

1 qualifications which shall include, but not be limited to, the following:

2 (A) Demonstrated ability to perform projects comparable in design,
3 scope and complexity.

4 (B) References of owners for whom building design-build projects
5 have been performed.

6 (C) Qualifications of personnel who will manage the design and
7 construction aspects of the project.

8 (D) The names and qualifications of the primary design consultants
9 and contractors with whom the building design-builder proposes to
10 subcontract. The building design-builder may not replace an identified
11 subcontractor or subconsultant without the written approval of the agency.

12 (E) Firms submitting a statement of qualifications shall be capable of
13 providing a public works bond in accordance with K.S.A. 60-1111, and
14 amendments thereto, and shall present evidence of such bonding capability
15 to the state building advisory commission with their statement of
16 qualifications. If a firm fails to present such evidence, such firm shall be
17 deemed unqualified for selection under this subsection.

18 (3) The state building advisory commission shall evaluate the
19 qualifications of all proposers in accordance with the instructions
20 prescribed in the request for proposal. Designers on the project shall be
21 evaluated in accordance with the requirements of K.S.A. 74-7003, and
22 amendments thereto. Qualified proposers selected by the evaluation team
23 may proceed to phase II of the selection process. Proposers lacking the
24 necessary qualifications to perform the work shall be disqualified and shall
25 not proceed to phase II of the process. Under no circumstances shall price
26 or fees be considered as a part of the prequalification criteria. Points
27 assigned in the phase I evaluation process shall not carry forward to phase
28 II of the process. All qualified proposers shall be ranked on points given in
29 phases II and III only. The two phase evaluation and scoring process shall
30 be combined to determine the greatest value to the state agency.

31 (4) The state building advisory commission shall have discretion to
32 disqualify any proposer, which in the state building advisory commission's
33 opinion, lacks the minimal qualifications required to perform the work.

34 (5) The state building advisory commission shall prepare a short list
35 containing a minimum of three, but no more than the top five qualified
36 proposers to participate in phase II of the process. If three qualified
37 proposers cannot be identified, the contracting process shall cease.

38 (6) Phase II of the process shall be conducted as follows:

39 (A) Proposers shall submit their design for the project to the level of
40 detail required in the request for proposal. The design proposal should
41 demonstrate compliance with the requirements set out in the request for
42 proposal.

43 (B) Up to 20% of the points awarded to each proposer in phase II

1 may be based on each proposer's qualifications and ability to design,
2 construct and deliver the project on time and within budget.

3 (C) The design proposal shall not contain any reference to the cost of
4 the proposal.

5 (D) The design submittals shall be evaluated and assigned points in
6 accordance with the requirements of the request for proposal.

7 (7) Phase III shall be conducted as follows:

8 (A) The phase III proposal shall provide a firm fixed cost of
9 construction. The proposal shall be accompanied by bid security and any
10 other submittals as required by the request for proposal.

11 (B) The proposed contract time, in calendar days, for completing a
12 project as designed by a proposer shall be considered as an element of
13 evaluation in phase III. The request for proposal shall establish a user
14 delay value for each proposed calendar day identified in the proposal.

15 (C) Cost and schedule proposals shall be submitted in accordance
16 with the instructions of the request for proposal. Failure to submit a cost
17 proposal on time shall be cause to reject the proposal.

18 (8) Proposals for phase II and III shall be submitted concurrently at
19 the time and place specified in the request for proposal. The phase III cost
20 proposals shall be opened only after the phase II design proposals have
21 been evaluated and assigned points.

22 (9) Phase III cost and schedule, which shall prescribe containing the
23 number of calendar days, proposals shall be opened and read aloud at the
24 time and place specified in the request for proposal. At the same time and
25 place, the evaluation team shall make public its scoring of phase II. Cost
26 proposals shall be evaluated in accordance with the requirements of the
27 request for proposal. In evaluating the proposals, each proposers' adjusted
28 score shall be determined by adding the phase III cost proposal to the
29 product of the proposed contract time and the user delay cost, and dividing
30 that sum by the phase II score.

31 (10) The responsive proposer with the lowest total number of points
32 shall be awarded the contract. If the director determines, that it is not in the
33 best interest of the state to proceed with the project pursuant to the
34 proposal offered by the proposer with the lowest total number of points,
35 the director shall reject all proposals. In such event, all qualified proposers
36 with higher point totals shall receive a stipend pursuant to subsection (e)
37 (12) of this section, and amendments thereto, of this act, and the proposer
38 with the lowest total number of points shall receive an amount equal to
39 two times such stipend.

40 (11) If all proposals are rejected, the negotiating committee may
41 solicit new proposals using different design criteria, budget constraints or
42 qualifications.

43 (12) As an inducement to qualified proposers, the agency shall pay a

1 stipend, the amount of which shall be established in the request for
2 proposal, to each prequalified building design-builder whose proposal is
3 *substantially* responsive but not accepted. Upon payment of the stipend to
4 any unsuccessful building design-build proposer, the state shall acquire a
5 nonexclusive right to use the design submitted by the proposer, and the
6 proposer shall have no further liability for its use by the state in any
7 manner. If the building design-build proposer desires to retain all rights
8 and interest in the design proposed, the proposer shall forfeit the stipend.

9 Sec. 5. K.S.A. 2014 Supp. 76-7,131 is hereby amended to read as
10 follows: 76-7,131. (a) As an alternative to the procedure established in
11 K.S.A. 2014 Supp. 76-7,128, and amendments thereto, the state board may
12 establish an alternative project delivery program under which construction
13 management at-risk procurement processes may be utilized for state
14 educational institution construction projects. This authorization for
15 construction management at-risk procurement shall be for the sole and
16 exclusive use of planning, acquiring, designing, building, equipping,
17 altering, repairing, improving or demolishing any structure or
18 appurtenance thereto, including facilities, utilities or other improvements
19 to any real property.

20 (b) The state board shall establish a state educational institution
21 procurement committee which shall be composed of five members, or their
22 designees, as follows: (1) The director of facilities at the state board who
23 shall serve as chairperson of the committee; (2) an architect or engineer
24 from a state educational institution; (3) a representative of the associated
25 general contractors of Kansas appointed from a list of at least three
26 nominees submitted by the association to the state board; (4) a
27 representative of the American institute of architects appointed from a list
28 of at least three nominees submitted by the association to the state board;
29 and (5) a representative of the American council of engineering companies
30 appointed from a list of at least three nominees submitted by the
31 association to the state board.

32 (c) The procurement committee shall review and approve requests for
33 the utilization of alternative project delivery under the state educational
34 institution project delivery building construction procurement act for
35 capital improvement projects financed totally from non-state moneys. If
36 the committee approves a request for utilization of alternative project
37 delivery, the committee shall provide a shortlist of construction
38 managers/design builders for use in such capital improvement project.

39 (d) The procurement committee shall approve those projects for
40 which the use of alternative project delivery procurement process is
41 appropriate. In making such determination, the committee shall consider
42 the following factors:

43 (1) The likelihood that the alternative project delivery method of

1 procurement selected will serve the public interest by providing substantial
2 savings of time or money over the traditional design-bid-build delivery
3 process.

4 (2) The ability to overlap design and construction phases is required
5 to meet the needs of the end user.

6 (3) The use of an accelerated schedule is required to make repairs
7 resulting from an emergency situation.

8 (4) The project presents significant phasing or technical complexities,
9 or both, requiring the use of an integrated team of designers and
10 constructors to solve project challenges during the design or
11 preconstruction phase.

12 (5) The use of an alternative project delivery method will not
13 encourage favoritism in awarding the public contract or substantially
14 diminish competition for the public contract.

15 (e) When a request is made for alternative delivery procurement by a
16 state educational institution, the institution on behalf of the state board
17 shall publish a notice in the Kansas register *and notify all active general*
18 *contractor industry associations in the state* that the procurement
19 committee will be holding a public hearing with the opportunity for
20 comment on such request. Notice shall be published *and notification shall*
21 *be made* at least 15 days prior to the hearing.

22 (f) If the procurement committee finds that the project does not
23 qualify for the alternative project delivery methods included under this act,
24 then the construction services for such project shall be obtained pursuant
25 to competitive bids and all contracts for construction services shall be
26 awarded to the lowest responsible bidder in accordance with procurement
27 procedures determined and administered by the state board which shall be
28 consistent with the provisions of this act.

29 (g) When it is necessary in the judgment of an institution to obtain
30 project services for a particular project as described under this act, the
31 institution shall publish a notice of the request for qualifications and
32 proposals for the required project services at least 15 days prior to the
33 commencement of such request in the Kansas register in accordance with
34 K.S.A. 75-430a, and amendments thereto, and in such other appropriate
35 manner as may be determined by the institution.

36 Sec. 6. K.S.A. 2014 Supp. 76-7,132 is hereby amended to read as
37 follows: 76-7,132. Construction management at-risk project delivery
38 procedures shall be conducted as follows:

39 (a) The state board shall determine the scope and level of detail
40 required to permit qualified construction manager or general contractors to
41 submit construction management at-risk proposals in accordance with the
42 request for proposals given the nature of the project.

43 (b) Prior to completion of the construction documents, but as early as

1 during the schematic design phase, the construction manager or general
2 contractor shall be selected. The project design professional may be
3 employed or retained by the institution to assist in the selection process.

4 (c) The institution shall publish a notice of the request for
5 qualifications and proposals for the required project services at least 15
6 days prior to the commencement of such requests in the Kansas register in
7 accordance with K.S.A. 75-430a, and amendments thereto, *notify all*
8 *active general contractor industry associations in the state of such request*
9 *at the same time of the notice and publish* in such other appropriate manner
10 as may be determined by the institution.

11 (d) The state board shall solicit proposals in a three stage
12 qualifications based selection process. Phase I shall be the solicitation of
13 qualifications and prequalifying a minimum of three but no more than five
14 construction managers or general contractors to advance to phase II. Phase
15 II shall be the solicitation of a request for proposal for the project, and
16 phase III shall include an interview with each proposer to present their
17 qualifications and answer questions.

18 (1) Phase I shall require all proposers to submit a statement of
19 qualifications which shall include, but not be limited to:

- 20 (A) Similar project experience;
- 21 (B) experience in this type of project delivery system;
- 22 (C) references from design professionals and owners from previous
23 projects;
- 24 (D) description of the construction manager's or general contractor's
25 project management approach;
- 26 (E) financial statements; and
- 27 (F) bonding capacity.

28 Firms submitting a statement of qualifications shall be capable of
29 providing a public works bond in accordance with K.S.A. 60-1111, and
30 amendments thereto, and shall present evidence of such bonding capacity
31 to the procurement committee with their statement of qualifications. If a
32 firm fails to present such evidence, such firm shall be deemed unqualified
33 for selection under this subsection.

34 (2) The procurement committee shall evaluate the qualifications of all
35 proposers in accordance with the instructions of the request for
36 qualifications. The procurement committee shall prepare a short list
37 containing a minimum of three and maximum of five qualified firms,
38 which have the best and most relevant qualifications to perform the
39 services required of the project, to participate in phase II of the selection
40 process. If three qualified proposers cannot be identified, the selection
41 process shall cease. The procurement committee shall have discretion to
42 disqualify any proposer that, in the procurement committee's opinion,
43 lacks the minimal qualifications required to perform the work.

1 (3) Phase II of the process shall be conducted as follows:

2 (A) Prequalified firms selected in phase I shall be given a request for
3 proposal. The request for proposal shall require all proposers to submit a
4 more in depth response including, but not be limited to:

5 (i) Company overview;

6 (ii) experience or references, or both, relative to the project under
7 question;

8 (iii) resumes of proposed project personnel;

9 (iv) overview of preconstruction services;

10 (v) overview of construction planning; *and*

11 (vi) proposed safety plan;

12 ~~(vii)~~(B) *All proposers shall submit proposed fees, including fees for*
13 *preconstruction services, fees for general conditions, fees for overhead and*
14 *profit and fees for self-performed work, if any, directly and only to the*
15 *secretary of administration. The secretary of administration shall consider*
16 *and make recommendations to the negotiating committee on the fees. The*
17 *recommendations by the secretary of administration shall be open for*
18 *public review. The scores on fees shall not account for more than 25% of*
19 *the total possible score.*

20 (4) Phase III shall be conducted as follows:

21 (A) (i) Once all proposals have been submitted, a negotiating
22 committee shall interview all of the proposers, allowing the competing
23 firms to present their proposed team members, qualifications and project
24 plan and to answer questions. Interview scores shall not account for more
25 than 50% of the total possible score.

26 (ii) A negotiating committee shall be composed of the head of the
27 institution for which the proposed construction project is planned, or a
28 person designated by the head of the institution, and two other persons
29 designated by the head of the institution for which the proposed project is
30 planned.

31 (B) The negotiating committee shall select the firm providing the best
32 value based on the proposal criteria ~~and~~, weighting factors utilized to
33 emphasize important elements of each project *and recommendation of the*
34 *secretary of administration. All scoring criteria and weighting factors shall*
35 *be identified by the institution in the request for proposal instructions to*
36 *proposers. The negotiating committee shall proceed to negotiate with and*
37 *attempt to enter into a contract with the firm receiving the best total score*
38 *to serve as the construction manager or general contractor for the project.*
39 *If the negotiating committee be unable to negotiate a satisfactory contract*
40 *with the firm scoring the best total score, negotiations with that firm shall*
41 *be terminated, and the committee shall undertake negotiations with the*
42 *firm with the next best total score, in accordance with this section.*

43 (C) If the negotiating committee determines that it is not in the best

1 interest of the institution to proceed with the project pursuant to the
2 proposals offered, the negotiating committee shall reject all proposals. If
3 all proposals are rejected, the state board may solicit new proposals using
4 different design criteria, budget constraints or qualifications.

5 (D) The contract to perform construction management at-risk services
6 for a project shall be prepared by the institution and entered into between
7 the institution and the firm performing such construction management at-
8 risk services. A construction management at-risk contract utilizing a cost
9 plus guaranteed maximum price contract value shall return all savings
10 under the guaranteed maximum price to the institution.

11 (E) The institution shall publish a construction services bid notice in
12 the Kansas register and in such other appropriate manner for the
13 construction manager or general contractor as may be determined by the
14 institution. Each construction services bid notice shall include the request
15 for bids and other bidding information prepared by the construction
16 manager or general contractor and the institution. The institution may
17 allow the construction manager or general contractor to self-perform
18 construction services provided the construction manager or general
19 contractor submits a bid proposal *prior to receipt of all other bids and*
20 *under the same conditions as all other competing firms.* If a firm
21 submitting a bid proposal fails to present such evidence, such firm shall be
22 deemed unqualified for selection under this subsection. At the time for
23 opening the bids, the construction manager or general contractor shall
24 evaluate the bids and shall determine the lowest responsible bidder except
25 in the case of self-performed work for which the institution shall determine
26 the lowest responsible bidder. The construction manager or general
27 contractor shall enter into a contract with each firm performing the
28 construction services for the project and make a public announcement of
29 each firm selected in accordance with this subsection.

30 Sec. 7. K.S.A. 2014 Supp. 72-6760f, 75-37,143, 75-37,144, 75-
31 37,145, 76-7,131 and 76-7,132 are hereby repealed.

32 Sec. 8. This act shall take effect and be in force from and after its
33 publication in the statute book.