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SENATE FILE 2202  
BY McKIBBEN

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act regulating the use of construction management services  
2 contracts for public improvements subject to competitive  
3 bidding requirements.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2202  
STATE GOVERNMENT

1 Section 1. NEW SECTION. 73A.22 CONSTRUCTION MANAGEMENT  
2 SERVICES.

3 1. DEFINITIONS. As used in this section:

4 a. "Construction management services" means the business  
5 of consulting, advising, or making recommendations to a public  
6 entity or to an agent of a public entity, including an  
7 architect, engineer, or designer, that is responsible for the  
8 construction of a public improvement, regarding planning for  
9 the construction of the public improvement, including but not  
10 limited to any of the following:

11 (1) Availability of materials and labor.

12 (2) Time requirements for procurement of materials and  
13 labor.

14 (3) Time requirements for construction.

15 (4) Projected costs for soliciting bids for all other  
16 services involved in the construction.

17 (5) Analysis of bids.

18 (6) Award of contracts.

19 (7) Methods of monitoring progress of the construction  
20 process during any phase of the design or construction of the  
21 public improvement.

22 For the purposes of this section, "construction management  
23 services" does not include the provision of construction,  
24 architectural, or engineering services for construction of a  
25 public improvement.

26 b. "Construction management services provider" or  
27 "provider" means a person or entity in the business of  
28 providing construction management services.

29 c. "Public entity" as used in this section means the  
30 state, a state agency, a political subdivision, or public  
31 organization.

32 d. "Public improvement" or "public improvement project" as  
33 used in this section means a building or other construction  
34 work to be paid for in whole or in part by the use of funds of  
35 the state, a state agency, or any political subdivision of the

1 state.

2 e. "Public organization" means the same as defined in  
3 section 15F.302.

4 2. REQUIREMENTS.

5 a. Prior to retaining a construction management services  
6 provider for a public improvement project subject to  
7 competitive bidding requirements, a public entity responsible  
8 for the public improvement shall, as set forth in the  
9 competitive bidding requirements applicable to that public  
10 entity, give notice and hold a public hearing to determine  
11 whether utilization of construction management services will  
12 result in either substantial improvement in the quality of the  
13 public improvement or substantial cost savings to the total  
14 capital cost budget and construction cost budget for the  
15 public improvement. The public entity shall determine whether  
16 the public improvement is of sufficient size and complexity to  
17 require close monitoring of the budget and scheduling and  
18 coordination of consultants and subcontractors such that these  
19 services cannot be satisfactorily performed by the general  
20 contractor or architect on the public improvement.

21 b. If the estimated total cost of utilizing construction  
22 management services for a public improvement is twenty-five  
23 thousand dollars or more, a public entity shall comply with  
24 the competitive bidding requirements applicable to the public  
25 entity. A bid to provide construction management services  
26 shall be accompanied by a performance bond or proof of  
27 insurance that includes professional liability coverage and  
28 umbrella coverage securing the performance of the construction  
29 management services provider in addition to any other bid  
30 security requirements contained in competitive bidding  
31 provisions applicable to the public entity.

32 c. A construction management services provider shall not  
33 perform construction work on a public improvement.

34 d. Construction management services shall not be utilized  
35 for a public improvement subject to competitive bidding

1 requirements unless the construction management services  
2 provider demonstrates that construction management services  
3 provided by the construction management services provider will  
4 result in either substantial improvement in the quality of the  
5 public improvement or substantial cost savings on the public  
6 improvement.

7 e. A contract for construction management services shall  
8 provide all of the following:

9 (1) That the provider is responsible for timely completion  
10 of the public improvement.

11 (2) That the provider shall not provide duplicative  
12 services that are normally provided by other project  
13 participants including but not limited to general contractors,  
14 architects, or engineers.

15 (3) That other public improvement project participants  
16 have meaningful involvement in the construction management of  
17 the public improvement.

18 (4) A full, written disclosure of total fees and charges  
19 for the construction management services.

20 3. CONFLICTS PROHIBITED. A construction management  
21 services contract for a public improvement shall not be  
22 awarded to a provider that controls, is controlled by, or  
23 shares common ownership or control of the general contractor  
24 of the public improvement; that guarantees, warrants, or  
25 otherwise assumes financial responsibility for the work of  
26 others on the public improvement; that guarantees a maximum  
27 price for the work of others on the public improvement; or  
28 that furnishes or guarantees a performance or payment bond for  
29 other contractors on the public improvement.

30 4. SELECTION OF PROVIDER. When selecting a construction  
31 management services provider for a public improvement, a  
32 public entity shall consider all of the following:

33 a. The provider's overhead costs and profit margin.

34 b. The provider's costs for items for which the provider  
35 will be reimbursed by the public entity.

- 1 c. The provider's qualifications.
- 2 d. The provider's demonstrated ability to manage projects
- 3 of comparable design, scope, and complexity.
- 4 e. The provider's demonstrated good faith efforts to
- 5 achieve compliance with federal, state, and local affirmative
- 6 action requirements.
- 7 f. The provider's references from other public entities
- 8 for whom the provider has performed construction management
- 9 services.
- 10 g. The provider's financial condition.
- 11 h. The qualifications of the provider's personnel who will
- 12 be assigned to the public improvement project.
- 13 i. The provider's demonstrated use of successful
- 14 management systems to perform estimating, scheduling, and cost
- 15 controls.

16 5. APPLICABILITY. This section shall not prohibit or  
 17 restrict the use of construction management services for  
 18 private projects. This section applies to public improvement  
 19 projects that are subject to competitive bidding requirements  
 20 under this chapter or chapter 18, 331, or 384.

21 Sec. 2. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
 22 3, shall not apply to this Act.

23 EXPLANATION

24 This bill regulates contracts for construction management  
 25 services for public improvement projects subject to  
 26 competitive bidding requirements. "Construction management  
 27 services" consist of consulting, advising, and making  
 28 recommendations to a public entity, or an agent of a public  
 29 entity, during any phase of the design, planning, or  
 30 construction of a public improvement.

31 The bill provides that before contracting for construction  
 32 management services on a public improvement subject to  
 33 competitive bidding requirements, a public entity must, as set  
 34 forth in the competitive bidding requirement applicable to  
 35 that public entity, give notice and hold a hearing to

1 determine whether utilization of construction management  
2 services will result in substantial improvement in either the  
3 quality of or cost savings for the public improvement.

4 The bill also provides that when the estimated cost of  
5 utilizing construction management services is \$25,000 or more,  
6 the contract for such services must be awarded pursuant to  
7 applicable competitive bidding requirements.

8 The bill provides that a contract shall not be awarded to a  
9 construction management services provider that controls, or is  
10 controlled by, or otherwise has financial responsibility or  
11 makes guarantees for other participants on the public  
12 improvement.

13 The bill enumerates considerations that a public entity  
14 shall make when selecting a construction management services  
15 provider.

16 The construction management services contract restrictions  
17 contained in this bill do not apply to the use of such  
18 services for private projects and apply only to public  
19 improvement projects that are subject to competitive bidding  
20 requirements. For purposes of this bill, a "public  
21 improvement" or "public improvement project" means a building  
22 or other construction work that is to be paid for in whole or  
23 in part by the use of funds of a public entity. For purposes  
24 of the bill, a "public entity" is the state, a state agency, a  
25 political subdivision, or a public organization, as defined in  
26 section 15F.302.

27 This bill may include a state mandate as defined in Code  
28 section 25B.3. This bill makes inapplicable Code section  
29 25B.2, subsection 3, which would relieve a political  
30 subdivision from complying with a state mandate if funding for  
31 the cost of the state mandate is not provided or specified.  
32 Therefore, political subdivisions are required to comply with  
33 any state mandate included in the bill.

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