

CHAPTER 86

SENATE BILL No. 9°

AN ACT concerning state educational institutions;
relating to construction improvement projects.

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

Section 1. (a) Sections 1 through 9, and amendments thereto, shall be known and may be cited as the state educational institution project delivery construction procurement act.

(b) The provisions of this act shall apply only to construction projects and construction project services totally funded by non-state moneys.

(c) The provisions of this act shall expire on June 30, 2012.

Sec. 2. As used in this act, unless the context expressly provides otherwise:

(a) “State educational institution” or “institution” means Fort Hays state university, Kansas state university of agriculture and applied science, Kansas state university veterinary medical center, Emporia state university, Pittsburg state university, university of Kansas, university of Kansas medical center, Wichita state university and Kansas state university, college of technology at Salina.

(b) “Alternative project delivery” means an integrated comprehensive building design and construction process, including all procedures, actions, sequences of events, contractual relations, obligations, interrelations and various forms of agreement all aimed at the successful completion of the design and construction of buildings and other structures whereby a construction manager or general contractor team is selected based on a qualifications and best value approach.

(c) “Ancillary technical services” include, but shall not be limited to, geology services and other soil or subsurface investigation and testing services, surveying, adjusting and balancing air conditioning, ventilating, heating and other mechanical building systems and testing and consultant services that are determined by the institution to be required for the project.

(d) “Architectural services” means those services described by subsection (e) of K.S.A. 74-7003, and amendments thereto.

(e) “Best value selection” means a selection based upon project cost, qualifications and other factors.

(f) (1) “Building construction” means furnishing labor, equipment, material or supplies used or consumed for the design, construction, alteration, renovation, repair or maintenance of a building or structure.

(2) “Building construction” does not include highways, roads, bridges, dams, turnpikes or related structures or stand-alone parking lots.

(g) “Construction project services” means the process of planning, acquiring, building, equipping, altering, repairing, improving, or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property, excluding highways, roads, bridges, dams, turnpikes or related structures or stand-alone parking lots.

(h) “Construction management at-risk services” means the services provided by a firm which has entered into a contract with the institution to be the construction manager or general contractor for the value and schedule of the contract for a project, which is to hold the trade contracts and execute the work for a project in a manner similar to a general contractor, and which is required to solicit competitive bids for the trade packages developed for the project and to enter into the trade contracts for a project with the lowest responsible bidder therefor. Construction management at-risk services may include, but are not limited to scheduling, value analysis, system analysis, constructability reviews, progress document reviews, subcontractor involvement and prequalification, subcontractor bonding policy, budgeting and price guarantees and construction coordination.

(i) “Construction management at-risk contract” means a contract under which an institution acquires from a construction manager or general contractor a series of preconstruction services and an at-risk financial obligation to carry out construction under a specified cost agreement.

(j) “Construction manager or general contractor” means any individual, partnership, joint venture, corporation, or other legal entity who is a member of the integrated project team with the institution, design pro-

fessional and other consultants that may be required for the project, who utilizes skill and knowledge of general contracting to perform preconstruction services and competitively procures and contracts with specialty contractors assuming the responsibility and the risk for construction delivery within a specified cost and schedule terms including a guaranteed maximum price.

(k) "Design criteria consultant" means a person, corporation, partnership, or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to K.S.A. 74-7003, and amendments thereto, and who is employed by contract to the institution to provide professional design and administrative services in connection with the preparation of the design criteria package.

(l) "Engineering services" means those services described by subsection (i) of K.S.A. 74-7003, and amendments thereto.

(m) "Guaranteed maximum price" means the cost of the work as defined in the contract.

(n) "Non-state moneys" means any funds received by a state educational institution from any source other than the state of Kansas or any agency thereof.

(o) "Parking lot" means a designated area constructed on the ground surface for parking motor vehicles. A parking lot included as part of a building construction project shall be subject to the provisions of this act. A parking lot designed and constructed as a stand-alone project shall not be subject to the provisions of this act.

(p) "Preconstruction services" means a series of services including, but not limited to: Design review, scheduling, cost control, value engineering, constructability evaluation and preparation and coordination of bid packages.

(q) (1) "Construction project" or "project" means the process of designing, constructing, reconstructing, altering or renovating a building or other structure.

(2) "Construction project" or "project" does not mean the process of designing, constructing, altering or repairing a public highway, road, bridge, dam, turnpike or related structure.

(r) "Procurement committee" means the state educational institution procurement committee established by section 6, and amendments thereto.

(s) "State board" means the state board of regents.

Sec. 3. (a) The procedure established in this section shall be used unless the use of the alternative project delivery process is determined appropriate as provided by section 6, and amendments thereto.

(b) All contracts for construction projects and construction project services shall be let by the institution to the lowest responsible bidder based on plans and specifications prepared for the project that received prior approval by the state board and the secretary of administration.

(c) (1) Upon any construction project for which plans and specifications will be prepared and bids let for the project as a whole the general contractor shall submit with the bid the names and addresses of subcontractors in accordance with paragraph (2) of this subsection. The general contractor shall submit the name and address of the electrical subcontractor for the electrical work portions of the project and the name and address of the mechanical subcontractor for the mechanical work portions of the project, if the general contractor will be subcontracting for such work. If there are project alternates listed in the bid documents and the general contractor's choice of subcontractors is dependent upon the combination of project alternates the state chooses, the general contractor shall submit for each combination of project alternates under which any subcontractor would change from the one named in the base bid, at the time such contractor submits such bid: (A) The name and address of the electrical subcontractor, if the general contractor will be subcontracting for the electrical work portions thereunder; and (B) the name and address of the mechanical subcontractor, if the general contractor will be subcontracting for the mechanical work portions thereunder. All changes and substitutions in listed subcontractors shall be subject to approval of the institution.

(2) The state board shall adopt a standard contract for use in connection with construction projects upon which bids are let for the project as a whole. No such standard contract adopted by the state board shall contain any provisions authorizing arbitration of any matters thereunder.

(3) The state board may adopt rules and regulations necessary for the implementation and administration of the provisions of this subsection.

(d) The provisions of this section shall not be construed to prohibit the administrative head of an institution from making any improvement or improvements when the same can be made by institutional labor or the use of material manufactured by an institution.

(e) The institution's purchasing department shall solicit sealed bids by publishing a notice once in the Kansas register not less than 10 days before the date stated in the notice for the opening of the bids. The institution's purchasing department with the approval of the state board may waive this publication of notice requirement when the state board determines that a more timely procurement is in the best interest of the institution. The institution's purchasing department also may designate a trade journal for the publication. The institution's purchasing department also may solicit such bids by sending notices by mail to prospective bidders and by posting the notice on a public bulletin board for at least 10 business days before the date stated in the notice for the opening of the bids unless otherwise provided by law. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

(f) Competitive bids shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.

(g) The institution's purchasing department shall have power to decide as to the lowest responsible bidder for all purchases, but if:

(1) The dollar amount of the bid received from the lowest responsible bidder from within the state is identical to the dollar amount of the bid received from the lowest responsible bidder from without the state, the contract shall be awarded to the bidder from within the state; and

(2) The institution's purchasing department may reject the bid of any bidder who is in arrears on taxes due the state, who is not properly registered to collect and remit taxes due the state or who has failed to perform satisfactorily on a previous contract with the state.

(h) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the institution's purchasing department for five years, unless reproduced as provided in K.S.A. 75-3737, and amendments thereto, and shall be open to public inspection as required by the Kansas open records act.

Sec. 4. Each change order to a contract entered into under the provisions of this act shall be related to an item or a matter that was included within the original program statement which was prepared and submitted with the capital improvement budget estimate for the project. Each such change order may be negotiated with a contractor performing work under the original contract for the project.

Sec. 5. (a) Construction projects shall not be subject to any building permit requirement or building code of any county, township, district, city or other political subdivision of this state or fees charged therefor. No construction project shall be subject to any inspection requirement or any requirement to obtain any permit, license or other instrument of approval for the project which is imposed by any county, township, district, city or other political subdivision of this state, except that such project shall be subject to reasonable inspections for the sole purpose of allowing members of the police and fire departments and other public emergency services personnel to become familiar with the project. As used in this section "building code" means any building code and includes any plumbing code, electrical wiring code, gas piping code or similar code. This act shall apply to all construction projects in existence prior to the effective date of this act and to those commenced on or after the effective date.

(b) Construction projects shall be exempt from the payment of fees relating to local zoning ordinances and resolutions, but the state shall reimburse a political subdivision for any related publication expenses incurred by the political subdivision.

Sec. 6. (a) As an alternative to the procedure established in section 3, and amendments thereto, the state board may establish an alternative project delivery program under which construction management at-risk procurement processes may be utilized for state educational institution construction projects. This authorization for construction management at-risk procurement shall be for the sole and exclusive use of planning, ac-

quiring, designing, building, equipping, altering, repairing, improving or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property.

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

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

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

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

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

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

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

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

(e) When a request is made for alternative delivery procurement by a state educational institution, the institution on behalf of the state board shall publish a notice in the Kansas register that the procurement committee will be holding a public hearing with the opportunity for comment on such request. Notice shall be published at least 15 days prior to the hearing.

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

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

Sec. 7. Construction management at-risk project delivery procedures shall be conducted as follows:

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

(b) Prior to completion of the construction documents, but as early as during the schematic design phase, the construction manager or gen-

eral contractor shall be selected. The project design professional may be employed or retained by the institution to assist in the selection process.

(c) The institution shall publish a notice of the request for qualifications and proposals for the required project services at least 15 days prior to the commencement of such requests in the Kansas register in accordance with K.S.A. 75-430a, and amendments thereto, and in such other appropriate manner as may be determined by the institution.

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

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

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

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

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

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

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

- (i) Company overview;
- (ii) experience or references, or both, relative to the project under question;
- (iii) resumes of proposed project personnel;
- (iv) overview of preconstruction services;
- (v) overview of construction planning;
- (vi) proposed safety plan;
- (vii) fees, including fees for preconstruction services, fees for general conditions, fees for overhead and profit and fees for self-performed work, if any.

(4) Phase III shall be conducted as follows:

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

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

(B) The negotiating committee shall select the firm providing the best value based on the proposal criteria and weighting factors utilized to emphasize important elements of each project. All scoring criteria and weighting factors shall be identified by the institution in the request for

proposal instructions to proposers. The negotiating committee shall proceed to negotiate with and attempt to enter into a contract with the firm receiving the best total score to serve as the construction manager or general contractor for the project. If the negotiating committee be unable to negotiate a satisfactory contract with the firm scoring the best total score, negotiations with that firm shall be terminated, and the committee shall undertake negotiations with the firm with the next best total score, in accordance with this section.

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

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

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

Sec. 8. (a) Each state educational institution may initiate and complete construction projects on state-owned property of the state educational institution from any non-state moneys granted, given to or otherwise received by the state educational institution if the construction projects have received prior approval by the state board and the plans and specifications for such projects have received prior approval by the secretary of administration. Such construction projects shall be totally financed from non-state moneys and the buildings and facilities shall become the property of the state of Kansas upon completion and acceptance by the secretary of administration. No such construction project for the construction of a building or facility shall be approved by the state board without having first advised and consulted with the joint committee on state building construction.

(b) A state educational institution may initiate and complete construction projects for repairs, remodeling or renovation of buildings and facilities located on state-owned property of the state educational institution from any non-state moneys granted, given to or otherwise received by the state educational institution if the construction projects for such repairs, remodeling or renovations have received prior approval by the state board and the plans and specifications for such projects have received prior approval by the secretary of administration. Such construction projects shall be totally financed from non-state moneys and the repairs, remodeling or renovations shall become the property of the state of Kansas upon completion and acceptance by the secretary of administration. No such construction projects to repair, remodel or renovate a building or facility shall be approved by the state board without having first advised and consulted with the joint committee on state building construction.

(c) Construction projects financed totally from non-state moneys shall be exempt from the provisions of K.S.A. 75-1251, 75-1252, 75-1253, 75-1254, 75-1255, 75-1256, 75-1257, 75-1258, 75-1259, 75-1260, 75-1261, 75-1262, 75-1263, 75-1264, 75-1265, 75-1266, 75-1267, 75-1268,

75-3739, 75-3740, 75-3740a, 75-3741, 75-3741a, 75-3741b, 75-3742, 75-3743, 75-3744, 75-5802, 75-5803, 75-5804, 75-5805, 75-5806 and 75-5807 and K.S.A. 2008 Supp. 75-37,141 75-37,142, 75-37,143 and 75-37,144, and amendments thereto. Such construction projects shall be inspected by the secretary of administration.

Sec. 9. The state board may adopt any rules and regulations necessary to implement the provisions of this act.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 13, 2009.

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