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Am. S. B. No. 262

Senator Blessing

Cosponsors: Senators Roegner, Antonio, Blackshear, Cirino, DeMora, Gavarone, Hicks-Hudson, Huffman, Ingram, Reineke, Reynolds, Schaffer, Timken, Weinstein

Representatives Swearingen, Mathews, A., Williams

To amend sections 9.334, 153.12, 153.501, 153.503, 1
and 153.693 of the Revised Code to require a 2
public authority or other party to a 3
construction contract to note variations from an 4
industry standard form. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 9.334, 153.12, 153.501, 153.503, 6
and 153.693 of the Revised Code be amended to read as follows: 7

Sec. 9.334. (A) (1) Every public authority planning to 8
contract for construction management services with a 9
construction manager at risk shall evaluate the proposals 10
submitted and select not fewer than three construction managers 11
at risk the public authority considers to be the most qualified 12
to provide the required construction management services, except 13
that the public authority shall select and rank fewer than three 14
when the public authority determines in writing that fewer than 15
three qualified construction managers at risk are available. 16

(2) For projects valued at less than four million dollars, 17
the public authority may require the construction manager at 18

risk to submit a proposal described in division (A) (1) of this 19
section along with a pricing proposal described in division (C) 20
of this section. The public authority shall provide each 21
construction manager at risk who desires to submit a proposal 22
under this division a pre-proposal meeting to explore the 23
proposals further, in which the public authority shall provide 24
the construction manager at risk with a description of the 25
project, including the scope and nature of the proposed services 26
and potential technical approaches. The public authority shall 27
proceed with selection and ranking as described in division (A) 28
(1) of this section, based only on the proposal submitted under 29
that division. Once the construction managers at risk have been 30
selected, the public authority shall proceed to evaluate the 31
pricing proposals of each selected construction manager at risk 32
as described in division (D) of this section, continuing the 33
selection process from there. 34

~~(B)~~ (B) (1) The public authority shall provide each 35
construction manager at risk selected under division (A) of this 36
section with a description of the project, including a statement 37
of available design detail, a description of how the guaranteed 38
maximum price for the project shall be determined, including the 39
estimated level of design detail upon which the guaranteed 40
maximum price shall be based, the form of the construction 41
management contract, and a request for a pricing proposal. 42

(2) When utilizing an industry standard published 43
construction management contract form, the public authority 44
shall provide the contract form in a manner that indicates any 45
alteration to the standard form by striking through and 46
underlining any changes to the original language of the standard 47
form, by cross-referencing conditions that are supplemental to 48
the standard form, or by including conditions that are 49

supplemental to the standard form that cross-reference the 50
section or sections of the standard form being altered. Failure 51
to indicate an alteration to the original language of the 52
standard form in the manner required above results in the 53
alteration being void and without effect such that the original 54
language prevails. 55

(C) The pricing proposal of each construction manager at 56
risk shall include at least the following regarding the 57
construction manager at risk: 58

(1) A list of key personnel for the project; 59

(2) A statement of the general conditions and contingency 60
requirements; 61

(3) A fee proposal divided into a preconstruction fee, a 62
construction fee, and the portion of the construction fee to be 63
at risk in a guaranteed maximum price. 64

(D) The public authority shall evaluate the submitted 65
pricing proposals and may hold discussions with individual 66
construction managers at risk to explore their proposals 67
further, including the scope and nature of the proposed services 68
and potential technical approaches. 69

(E) After evaluating the pricing proposals, the public 70
authority shall rank the selected construction managers at risk 71
based on its evaluation of the value of each pricing proposal, 72
with such evaluation considering the proposed cost and 73
qualifications. 74

(F) The public authority shall enter into negotiations for 75
a construction management contract with the construction manager 76
at risk whose pricing proposal the public authority determines 77
to be the best value under division (E) of this section. 78

Contract negotiations shall be directed toward:	79
(1) Ensuring that the construction manager at risk and the public authority mutually understand the essential requirements involved in providing the required construction management services, including the provisions for the use of contingency funds and the possible distribution of savings in the final costs of the project;	80 81 82 83 84 85
(2) Ensuring that the construction manager at risk will be able to provide the necessary personnel, equipment, and facilities to perform the construction management services within the time required by the construction management contract;	86 87 88 89 90
(3) Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the public authority to the construction manager at risk for the project and that shall include the costs of all the work, the cost of its general conditions, the contingency, and the fee payable to the construction manager at risk.	91 92 93 94 95 96 97
(G) (1) If the public authority fails to negotiate a construction management contract with the construction manager at risk whose pricing proposal the public authority determines to be the best value under division (E) of this section, the public authority shall inform the construction manager at risk, in writing, of the termination of negotiations.	98 99 100 101 102 103
(2) Upon terminating negotiations, the public authority may enter into negotiations as provided in this section with the construction manager at risk that the public authority ranked next highest under division (E) of this section. If negotiations	104 105 106 107

fail, the public authority may enter into negotiations as 108
provided in this section with the construction manager at risk 109
the public authority ranked next highest under division (E) of 110
this section. 111

(3) If a public authority fails to negotiate a 112
construction management contract with a construction manager at 113
risk whose pricing proposal the public authority determines to 114
be the best value under division (E) of this section, the public 115
authority may select additional construction managers at risk to 116
provide pricing proposals to the public authority pursuant to 117
this section or may select an alternative delivery method for 118
the project. 119

(H) If the public authority and construction manager at 120
risk fail to agree on a guaranteed maximum price, nothing in 121
this section shall prohibit the public authority from allowing 122
the construction manager at risk to provide the management 123
services that a construction manager is authorized to provide. 124

(I) Nothing in this section affects a public authority's 125
right to accept or reject any or all proposals in whole or in 126
part. 127

Sec. 153.12. (A) With respect to award of any contract for 128
the construction, reconstruction, improvement, enlargement, 129
alteration, repair, painting, or decoration of a public 130
improvement made by the state, or any county, township, 131
municipal corporation, school district, or other political 132
subdivision, or any public board, commission, authority, 133
instrumentality, or special purpose district of or in the state 134
or a political subdivision or that is authorized by state law, 135
the award, and execution of the contract, shall be made within 136
sixty days after the date on which the bids are opened. The 137

failure to award and execute the contract within sixty days 138
invalidates the entire bid proceedings and all bids submitted, 139
unless the time for awarding and executing the contract is 140
extended by mutual consent of the owner or its representatives 141
and the bidder whose bid the owner accepts and with respect to 142
whom the owner subsequently awards and executes a contract. The 143
public owners referred to in this section shall include, in the 144
plans and specifications for the project for which bids are 145
solicited, the estimate of cost. The bid for which the award is 146
to be made shall be opened at the time and place named in the 147
advertisement for bids, unless extended by the owner or its 148
representative or unless, within seventy-two hours prior to the 149
published time for the opening of bids, excluding Saturdays, 150
Sundays, and legal holidays, any modification of the plans or 151
specifications and estimates of cost for the project for which 152
bids are solicited is issued and mailed or otherwise furnished 153
to persons who have obtained plans or specifications for the 154
project, for which the time for opening of bids shall be 155
extended one week, with no further advertising of bids required. 156
The contractor, upon request, is entitled to a notice to proceed 157
with the work by the owner or its representative upon execution 158
of the contract. No contract to which this section applies shall 159
be entered into if the price of the contract, or, if the project 160
involves multiple contracts where the total price of all 161
contracts for the project, is in excess of ten per cent, in the 162
case of a contract made by the state or a public board, 163
commission, authority, or instrumentality of the state, or 164
twenty per cent, in the case of a contract made by a county, 165
township, municipal corporation, school district, special 166
purpose district, or other political subdivision or a public 167
board, commission, authority, or instrumentality of the 168
political subdivision, above the entire estimate thereof, nor 169

shall the entire cost of the construction, reconstruction, 170
repair, painting, decorating, improvement, alteration, addition, 171
or installation, including changes and estimates of expenses for 172
architects or engineers, exceed in the aggregate the amount 173
authorized by law. 174

The unit or lump sum price stated in the contract shall be 175
used in determining the amount to be paid and shall constitute 176
full and final compensation for all the work. 177

Partial payment to the contractor for work performed under 178
the lump sum price shall be based on a schedule prepared by the 179
contractor and approved by the architect or engineer who shall 180
apportion the lump sum price to the major components entering 181
into or forming a part of the work under the lump sum price. 182

Partial payments to the contractor for labor performed 183
under either a unit or lump sum price contract shall be made at 184
a rate of not less than ninety-six per cent of the estimates 185
prepared by the contractor and approved by the architect or 186
engineer. No subcontract shall be paid at a rate lower than the 187
rate being paid to the contractor by the public authority. 188

The amounts and time of payments of any public 189
improvements contract made by the state or any county, township, 190
municipal corporation, school district, or other political 191
subdivision, or any public board, commission, authority, 192
instrumentality, or special purpose district of or in the state 193
or a political subdivision or that is authorized by state law, 194
except as provided in section 5525.19 of the Revised Code, shall 195
be governed by this section and sections 153.13 and 153.14 of 196
the Revised Code. If the time for awarding the contract is 197
extended by mutual consent, or if the owner or its 198
representative fails to issue a timely notice to proceed as 199

required by this section, the owner or its representative shall 200
issue a change order authorizing delay costs to the contractor, 201
which does not invalidate the contract. The amount of such a 202
change order to the owner shall be determined in accordance with 203
the provisions of the contract for change orders or force 204
accounts or, if no such provision is set forth in the contract, 205
the cost to the owner shall be the contractor's actual costs 206
including wages, labor costs other than wages, wage taxes, 207
materials, equipment costs and rentals, insurance, and 208
subcontracts attributable to the delay, plus a reasonable sum 209
for overhead. In the event of a dispute between the owner and 210
the contractor concerning such change order, procedures shall be 211
commenced under the applicable terms of the contract, or, if the 212
contract contains no provision for resolving the dispute, it 213
shall be resolved pursuant to the procedures for arbitration in 214
Chapter 2711. of the Revised Code, except as provided in 215
division (B) of this section. Nothing in this division shall be 216
construed as a limitation upon the authority of the director of 217
transportation granted in Chapter 5525. of the Revised Code. 218

(B) If a dispute arises between the state and a contractor 219
concerning the terms of a public improvement contract let by the 220
state or concerning a breach of the contract, and after 221
administrative remedies provided for in such contract and any 222
alternative dispute resolution procedures provided in accordance 223
with guidelines established by the executive director of the 224
Ohio facilities construction commission are exhausted, the 225
contractor may bring an action to the court of claims in 226
accordance with Chapter 2743. of the Revised Code. The state or 227
the contractor may request the chief justice of the supreme 228
court to appoint a referee or panel of referees in accordance 229
with division (C) (3) of section 2743.03 of the Revised Code. As 230

used in this division, "dispute" means a disagreement between 231
the state and the contractor concerning a public improvement 232
contract let by the state. 233

(C) When utilizing an industry standard published 234
construction management contract form, the public authority 235
shall provide the contract form in a manner that indicates any 236
alteration to the standard form by striking through and 237
underlining any changes to the original language of the standard 238
form, by cross-referencing conditions that are supplemental to 239
the standard form, or by including conditions that are 240
supplemental to the standard form that cross-reference the 241
section or sections of the standard form being altered. Failure 242
to indicate an alteration to the original language of the 243
standard form in the manner required above results in the 244
alteration being void and without effect such that the original 245
language prevails. 246

Sec. 153.501. (A) A public authority may accept a 247
subcontract awarded by a construction manager at risk, a design- 248
build firm, or a general contracting firm, or may reject any 249
such subcontract if the public authority determines that the 250
bidder is not responsible. When utilizing an industry standard 251
published construction management contract form, the public 252
authority shall provide the contract form in a manner that 253
indicates any alteration to the standard form by striking 254
through and underlining any changes to the original language of 255
the standard form, by cross-referencing conditions that are 256
supplemental to the standard form, or by including conditions 257
that are supplemental to the standard form that cross-reference 258
the section or sections of the standard form being altered. 259
Failure to indicate an alteration to the original language of 260
the standard form in the manner required above results in the 261

alteration being void and without effect such that the original 262
language prevails. 263

(B) A public authority may authorize a construction 264
manager at risk or design-build firm to utilize a design-assist 265
firm on any public improvement project without transferring any 266
design liability to the design-assist firm. 267

(C) If the construction manager at risk or design-build 268
firm intends and is permitted by the public authority to self- 269
perform a portion of the work to be performed, the construction 270
manager at risk or design-build firm shall submit a sealed bid 271
to the public authority for the portion of the work prior to 272
accepting and opening any bids for the same work, except when 273
the public authority requests a guaranteed maximum price 274
proposal due at the time of selection. 275

Sec. 153.503. (A) The Ohio facilities construction 276
commission, pursuant to Chapter 119. of the Revised Code, shall 277
adopt rules to do all of the following: 278

~~(A)~~ (1) Prescribe the procedures and criteria for 279
determining the best value selection of a construction manager 280
at risk or design-build firm; 281

~~(B)~~ (2) Set forth standards to be followed by construction 282
managers at risk and design-build firms when establishing 283
prequalification criteria pursuant to section 153.502 of the 284
Revised Code; 285

~~(C)~~ (3) Prescribe the form for the contract documents to be 286
used by a construction manager at risk, design-build firm, or 287
general contractor when entering into a subcontract; 288

~~(D)~~ (4) Prescribe the form for the contract documents to be 289
used by a public authority when entering into a contract with a 290

construction manager at risk or design-build firm. 291

(B) The rules adopted under divisions (A) (3) and (4) of 292
this section shall include a requirement that a public 293
authority, construction manager at risk, design-build firm, or 294
general contracting firm utilizing a prescribed industry 295
standard published contract or subcontract form shall provide 296
the form in a manner that indicates any alteration to the 297
standard form by striking through and underlining any changes to 298
the original language of the standard form, by cross-referencing 299
conditions that are supplemental to the standard form, or by 300
including conditions that are supplemental to the standard form 301
that cross-reference the section or sections of the standard 302
form being altered. Failure to indicate an alteration to the 303
original language of the standard form in the manner required 304
above results in the alteration being void and without effect 305
such that the original language prevails. 306

Sec. 153.693. (A) (1) For every design-build contract, the 307
public authority planning to contract for design-build services, 308
in consultation with the criteria architect or engineer, shall 309
evaluate the statements of qualifications submitted by design- 310
build firms specifically regarding the project, including the 311
design-build firm's proposed architect or engineer of record. 312

(2) For projects valued at less than four million dollars, 313
the public authority may require the design-build firm to submit 314
a statement along with a pricing proposal described in division 315
(B) (2) (h) of this section. The public authority shall provide 316
each design-build firm who desires to submit both a statement 317
and a proposal a pre-proposal meeting to explore the proposals 318
further, in which the public authority shall provide the design- 319
build firm with a description of the project, including the 320

scope and nature of the proposed services and potential 321
technical approaches. After and only after the public authority 322
ranks and selects firms under division (B) (1) of this section, 323
the public authority shall review the pricing proposals 324
submitted by selected firms under this division, and proceed 325
under division (B) (3) of this section, continuing the selection 326
process from there. 327

(B) Following this evaluation, the public authority shall: 328

(1) Select and rank not fewer than three firms which it 329
considers to be the most qualified to provide the required 330
design-build services, except that the public authority shall 331
select and rank fewer than three firms when the public authority 332
determines in writing that fewer than three qualified firms are 333
available; 334

(2) Provide each selected design-build firm with all of 335
the following: 336

(a) A description of the project and project delivery; 337

(b) The design criteria produced by the criteria architect 338
or engineer under section 153.692 of the Revised Code; 339

(c) A preliminary project schedule; 340

(d) A description of any preconstruction services; 341

(e) A description of the proposed design services; 342

(f) A description of a guaranteed maximum price, including 343
the estimated level of design on which such guaranteed maximum 344
price is based; 345

(g) The form of the design-build services contract~~†~~. If 346
using an industry standard published design-build services 347

contract form, the public authority shall provide the form in a 348
manner that indicates any alteration to the standard form by 349
striking through and underlining any changes to the original 350
language of the standard form, by cross-referencing conditions 351
that are supplemental to the standard form, or by including 352
conditions that are supplemental to the standard form that 353
cross-reference the section or sections of the standard form 354
being altered. If the public authority fails to indicate an 355
alteration to the original language of the standard form, the 356
alteration is void and without effect and the original language 357
prevails. 358

(h) Except for projects under division (A)(2) of this 359
section, a request for a pricing proposal that shall be divided 360
into a design services fee and a preconstruction and design- 361
build services fee. The pricing proposal of each design-build 362
firm shall include at least all of the following: 363

(i) A list of key personnel and consultants for the 364
project; 365

(ii) Design concepts adhering to the design criteria 366
produced by the criteria architect or engineer under section 367
153.692 of the Revised Code; 368

(iii) The design-build firm's statement of general 369
conditions and estimated contingency requirements; 370

(iv) A preliminary project schedule. 371

(3) Evaluate the pricing proposal submitted by each 372
selected firm and, at its discretion, hold discussions with each 373
firm to further investigate its pricing proposal, including the 374
scope and nature of the firm's proposed services and potential 375
technical approaches; 376

(4) Rank the selected firms based on the public authority's evaluation of the value of each firm's pricing proposal, with such evaluation considering each firm's proposed costs and qualifications;	377 378 379 380
(5) Enter into contract negotiations for design-build services with the design-build firm whose pricing proposal the public authority determines to be the best value under this section.	381 382 383 384
(C) In complying with division (B) (5) of this section, contract negotiations shall be directed toward:	385 386
(1) Ensuring that the design-build firm and the public authority mutually understand the essential requirements involved in providing the required design-build services, the provisions for the use of contingency funds, and the terms of the contract, including terms related to the possible distribution of savings in the final costs of the project;	387 388 389 390 391 392
(2) Ensuring that the design-build firm shall be able to provide the necessary personnel, equipment, and facilities to perform the design-build services within the time required by the design-build construction contract;	393 394 395 396
(3) Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the public authority to the design-build firm for the project and that shall include the costs of all work, the cost of its general conditions, the contingency, and the fee payable to the design-build firm.	397 398 399 400 401 402 403
(D) If the public authority fails to negotiate a contract with the design-build firm whose pricing proposal the public	404 405

authority determines to be the best value as determined under 406
this section, the public authority shall inform the design-build 407
firm in writing of the termination of negotiations. The public 408
authority may then do the following: 409

(1) Negotiate a contract with a design-build firm ranked 410
next highest under this section following the negotiation 411
procedure described in this section; 412

(2) If negotiations fail with the design-build firm under 413
division (D) (1) of this section, negotiate a contract with the 414
design-build firm ranked next highest under this section 415
following the negotiation procedure described in this section 416
and continue negotiating with the design-build firms selected 417
under this section in the order of their ranking until a 418
contract is negotiated. 419

(E) If the public authority fails to negotiate a contract 420
with a design-build firm whose pricing proposal the public 421
authority determines to be the best value as determined under 422
this section, it may select additional design-build firms to 423
provide pricing proposals to the public authority pursuant to 424
this section or may select an alternative delivery method for 425
the project. 426

(F) The public authority may provide a stipend for pricing 427
proposals received from design-build firms. 428

(G) Nothing in this section affects a public authority's 429
right to accept or reject any or all proposals in whole or in 430
part. 431

Section 2. That existing sections 9.334, 153.12, 153.501, 432
153.503, and 153.693 of the Revised Code are hereby repealed. 433

Section 3. The changes in sections 9.334, 153.501, 434

153.503, and 153.693 of the Revised Code and division (C) of	435
section 153.12 of the Revised Code as amended by this act apply	436
to a contract entered into on or after the effective date of	437
this section and do not apply to a contract already in effect on	438
the effective date of this section.	439