

**As Passed by the House**

**136th General Assembly**

**Regular Session**

**2025-2026**

**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, Abrams, Bird, Brennan, Claggett, Click, Cockley, Deeter, Grim, Holmes, Klopfenstein, Richardson, Rogers, Russo, Sigrist, Sims, Somani, Tims, Troy, White, E., Young**

---

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 80  
public authority mutually understand the essential requirements 81  
involved in providing the required construction management 82  
services, including the provisions for the use of contingency 83  
funds and the possible distribution of savings in the final 84  
costs of the project; 85

(2) Ensuring that the construction manager at risk will be 86  
able to provide the necessary personnel, equipment, and 87  
facilities to perform the construction management services 88  
within the time required by the construction management 89  
contract; 90

(3) Agreeing upon a procedure and schedule for determining 91  
a guaranteed maximum price using an open book pricing method 92  
that shall represent the total maximum amount to be paid by the 93  
public authority to the construction manager at risk for the 94  
project and that shall include the costs of all the work, the 95  
cost of its general conditions, the contingency, and the fee 96  
payable to the construction manager at risk. 97

(G) (1) If the public authority fails to negotiate a 98  
construction management contract with the construction manager 99  
at risk whose pricing proposal the public authority determines 100  
to be the best value under division (E) of this section, the 101  
public authority shall inform the construction manager at risk, 102  
in writing, of the termination of negotiations. 103

(2) Upon terminating negotiations, the public authority 104  
may enter into negotiations as provided in this section with the 105

construction manager at risk that the public authority ranked 106  
next highest under division (E) of this section. If negotiations 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 used by a public authority when entering into a contract with a construction manager at risk or design-build firm.

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

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

(2) For projects valued at less than four million dollars, the public authority may require the design-build firm to submit a statement along with a pricing proposal described in division (B) (2) (h) of this section. The public authority shall provide each design-build firm who desires to submit both a statement and a proposal a pre-proposal meeting to explore the proposals

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~~r~~. 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 technical approaches;	375 376
(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 404  
with the design-build firm whose pricing proposal the public 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