

Stricken language would be deleted from and underlined language would be added to present law.
Act 809 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/14/17
A Bill

HOUSE BILL 2273

By: Representative Wing

For An Act To Be Entitled

AN ACT TO DEVELOP A CONSTRUCTION MANAGER-GENERAL CONTRACTOR METHOD OF PROCUREMENT FOR TRANSPORTATION PROJECTS; TO CREATE A CONSTRUCTION MANAGER-GENERAL CONTRACTOR METHOD OF PROCUREMENT PILOT PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

TO DEVELOP A CONSTRUCTION MANAGER-GENERAL CONTRACTOR METHOD OF PROCUREMENT FOR TRANSPORTATION PROJECTS; AND TO CREATE A CONSTRUCTION MANAGER-GENERAL CONTRACTOR METHOD OF PROCUREMENT PILOT PROGRAM.

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

SECTION 1. Arkansas Code Title 19, Chapter 11, is amended to add an additional subchapter to read as follows:

Subchapter 14 – Construction Manager-General Contractor Method of Procurement Pilot Program

19-11-1401. Title.

This subchapter shall be known and may be cited as the "Construction Manager-General Contractor Method of Procurement Pilot Program".

19-11-1402. Legislative findings.

The General Assembly finds that:

(1) An efficient transportation system is critical for



Arkansas's economy and the quality of life of the state's residents;

(2) Transportation projects are costly and the revenues currently available for highways and local roads are inadequate to preserve and maintain existing infrastructure and to provide funds for highway improvements;

(3) The State Highway Commission is interested in developing an alternative, cost-effective, procurement procedure for transportation projects performed by the commission and the Arkansas State Highway and Transportation Department;

(4) Other states have begun to explore the utilization of a construction manager-general contractor method as a cost-effective and efficient option for constructing transportation projects, including the State of California, which applies the construction manager-general contractor method when it is anticipated that the use of the construction manager-general contractor method will reduce transportation project costs or expedite transportation project completion in a manner that is not achievable through the design-bid-build method;

(5) A construction manager-general contractor method allows the commission to engage a construction manager:

(A) To assist during the design and development process of the transportation project, including without limitation to provide input concerning the transportation project's:

(i) Design;

(ii) Scheduling;

(iii) Pricing; and

(iv) Phasing; and

(B) Who may subsequently become the general contractor and construct the transportation project if the parties agree on a guaranteed maximum price; and

(6) The cost-effective benefits are achieved by shifting the liability and risk for cost containment and transportation project scheduling to the construction manager, which leads many states to call this method the "construction manager at-risk method".

19-11-1403. Definitions.

As used in this subchapter:

(1) "Authorized contingency" means a provision prepared and submitted by the construction manager-general contractor as part of the guaranteed maximum price that is designed to cover costs that may result from:

(A) Incomplete design;

(B) Unforeseen and unpredictable conditions; or

(C) Uncertainties within the defined transportation project scope that a prudent construction manager would not have reasonably detected or anticipated during the discharge of his or her preconstruction duties;

(2) "Construction manager-general contractor" means a business firm or a legal entity selected by the Director of State Highways and Transportation, to act as a construction manager to provide preconstruction services during the design and development phase of a transportation project;

(3) "Construction manager-general contractor method" means a transportation project delivery method using a best value procurement process in which a construction manager is procured to provide preconstruction services and may subsequently construct the whole transportation project or any part of the transportation project as the general contractor if the Arkansas State Highway and Transportation Department and the construction manager-general contractor reach an agreement on a guaranteed maximum price;

(4) "Guaranteed maximum price" means:

(A) The total dollar amount agreed to by the construction manager-general contractor to complete the construction of the transportation project, including without limitation the construction manager-general contractor's:

(i) Direct costs;

(ii) Overhead;

(iii) Profit; and

(iv) Any authorized contingency; and

(B) Any dollar amount added to the total dollar amount of the transportation project submitted under subdivision (4)(A) of this section to cover additional costs arising from changes in the scope of work as the department may subsequently direct in writing;

(5) "Preconstruction services" means work, labor, or services, including services furnished in connection with the design and development of

a transportation project before the construction phase, including without limitation:

(A) Cost estimates;

(B) Schedule analysis;

(C) Sequencing of work;

(D) Risk identification and mitigation;

(E) Constructability reviews;

(F) Evaluation of alternative construction options;

(G) Assistance with various permits;

(H) Coordination with public or private utility service providers;

(I) Communication with third-party stakeholders or the public; and

(J) Development of a guaranteed maximum price; and

(6) "Request for proposals" means a document or publication soliciting proposals for a contract for construction of a transportation project between a construction manager-general contractor and the department.

19-11-1404. Construction Manager-General Contractor Method of Procurement Pilot Program – Creation.

(a) The State Highway Commission may develop a Construction Manager-General Contractor Method of Procurement Pilot Program to test the utilization of the construction manager-general contractor method as a cost-effective option for constructing transportation projects.

(b)(1) During the term of the program the commission may select a total of three (3) transportation projects on which to utilize the construction manager-general contractor method.

(2)(A) The sum of the construction cost estimates prepared as required under § 19-11-1407 of all three (3) construction manager-general contractor method transportation projects shall not exceed two hundred million dollars (\$200,000,000).

(B) The construction cost estimate of the first construction manager-general contractor method transportation project shall not exceed seventy million dollars (\$70,000,000).

(C) The sum of the construction cost estimates of the remaining two (2) construction manager-general contractor method

transportation projects shall not exceed one hundred million dollars (\$100,000,000).

(c) The Director of State Highways and Transportation shall send written notice identifying the transportation project and the reasons for deciding to apply the construction manager-general contractor method to that specific transportation project to:

(1) The Chair of the House Committee on Public Transportation;
and

(2) The Chair of the Senate Committee on Public Transportation, Technology, and Legislative Affairs.

(d) A program established under this subchapter shall terminate no later than June 30, 2022.

19-11-1405. Project selection.

(a) The Arkansas State Highway and Transportation Department shall not initiate another construction manager-general contractor method transportation project until after a contract for construction of the first construction manager-general contractor method transportation project has been awarded.

(b) If the department determines that a construction manager-general contractor method of procurement is appropriate for a transportation project, the department shall establish a procedure for awarding the contract for construction of the construction manager-general contractor method transportation project using the criteria listed in § 19-11-1406.

19-11-1406. Request for proposals.

(a) A request for proposals under this subchapter shall include without limitation the following:

(1) The minimum qualifications of the construction manager-general contractor;

(2) The procedures for submitting a proposal to the Arkansas State Highway and Transportation Department, the criteria for the evaluation of and selection of a construction manager-general contractor to perform preconstruction services, and the relative weight assigned for each criteria as indicated in a technical scoring matrix;

(3) The form of the contract to be awarded for preconstruction

services;

(4) A listing of the types and scope of the preconstruction services that will be required;

(5) The scope of the intended contract;

(6) The budget limits for the transportation project and the preconstruction services;

(7) The method of payment and structure of fees for the preconstruction services;

(8) A requirement that the construction manager-general contractor submit relevant information regarding any licenses, registration, or credentials that may be required to construct the transportation project;

(9) A requirement that the construction manager-general contractor provide evidence that establishes that the construction manager-general contractor is capable of obtaining the required bonding and insurance;

(10) A requirement that the construction manager-general contractor submit information concerning the debarment or default from a federal, state, or local government transportation project within the past five (5) years;

(11) A requirement that the construction manager-general contractor provide information concerning the bankruptcy or receivership of any of its members, including information concerning any work completed by a surety;

(12) A requirement that the construction manager-general contractor provide evidence of competency, capability, and capacity to complete a transportation project of similar size, scope, or complexity; and

(13) A prohibition that excludes a person or firm that has received compensation for assisting the department in preparing the request for proposals from submitting a proposal in response to the request for proposals or participating as a construction manager-general contractor team member.

(b) A request for proposals under this subchapter shall not:

(1) Require that the construction manager-general contractor have prior experience with any particular transportation project procurement method as a condition for submitting a proposal; and

(2) Give any preference for any particular contract delivery

method in the scoring of a proposal.

(c) The department shall:

(1) Send a written notice of award to the best-evaluated construction manager-general contractor; or

(2) Send to all the construction manager-general contractors that submitted a proposal a written notice that all proposals have been rejected.

19-11-1407. Construction manager-general contractor selection.

(a) The Arkansas State Highway and Transportation Department shall:

(1) Prepare contract plans, specifications, special provisions, and other requirements composing the contract for construction of a transportation project elected for procurement using the construction manager-general contract method authorized by this subchapter;

(2) Prepare a detailed construction cost estimate to evaluate the appropriate price for the construction of the transportation project;

(3) If requested by the Director of State Highways and Transportation, have an independent third-party cost estimator prepare a detailed construction cost estimate to confirm the appropriate price for the construction of the transportation project;

(4) Include in the contract created by subdivision (a)(1) of this section a requirement that the construction manager-general contractor perform at least thirty percent (30%) of the total cost for construction, not including the preconstruction work performed by the construction manager-general contractor; and

(5)(A) Keep the construction cost estimates prepared under subdivisions (a)(2) and (3) of this section confidential and not subject to public disclosure until after the contract has been awarded.

(B) Construction cost estimates prepared under subdivisions (a)(2) and (3) of this section are confidential and exempt from public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., but only until after the contract has been awarded.

(b) A construction manager-general contractor shall submit to the department a guaranteed maximum price for the construction of the transportation project using the contract plans, specifications, special provisions, and other requirements prepared by the department as required by

subdivision (a)(1) of this section.

(c) The department may award the contract to a construction manager-general contractor if the guaranteed maximum price does not exceed the cost estimate provided by the department or independent third party by more than ten percent (10%).

(d) If the director rejects the proposed guaranteed maximum price, the department may:

(1) Work with the construction manager-general contractor to find a guaranteed maximum price that is acceptable to both parties; or

(2) Request that the construction manager-general contractor provide additional preconstruction services and submit a new guaranteed maximum price as directed by this section.

(e) If the department does not award the contract to a construction manager-general contractor, the department may proceed with the transportation project using a procurement process authorized by law.

19-11-1408. Rules.

The State Highway Commission and the Arkansas State Highway and Transportation Department may promulgate rules to implement and administer this subchapter.

/s/Wing

APPROVED: 04/01/2017