

HCS HB 844 -- CONSTRUCTION MANAGEMENT

SPONSOR: Hough

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Emerging Issues by a vote of 9 to 0. Voted "Do Pass with HCS" by the Select Committee on General Laws by a vote of 9 to 0.

This bill repeals the provision prohibiting a construction manager from bidding or performing the actual construction on a public works project in which he is acting as construction manager and any construction firm which controls, is controlled by, or shares common ownership or control with the construction manager from being allowed to bid on or perform work on the project. The bill allows a construction manager to bid on or perform any of the actual construction on a public works project in which he is acting as a construction manager but only if the construction manager submits a sealed bid in the same manner as a trade contractor. The bill specifies that all successful bidders that contract directly with the public owner must provide payment and performance bonds to the public owner.

The bill revises the provision that prohibits a construction management services contract from being awarded by a public owner on a negotiated basis if the construction manager or a firm that controls, is controlled by, or shares common ownership or control with the construction manager, guarantees, warrants, or otherwise assumes financial responsibility for the work of others on the project; provides the public owner with a guaranteed maximum price for the work of others on the project; or furnishes or guarantees a performance or payment bond for other contractor on the project and requires the contract for construction management services to be let by competitive bidding by allowing construction management services to be awarded on a negotiated basis regardless of those conditions and allows the construction manager to enter into contracts with the successful bidders.

The bill authorizes any political subdivision to enter into design-build contracts for construction projects. In its main provisions, the bill:

- (1) Establishes design-build contract procedures;
- (2) Requires the political subdivision to adopt procedures for requesting proposals and evaluating and awarding contracts from a minimum of three and a maximum of five pre-qualified design-builders;

(3) Requires that separate proposals be submitted for design-builder qualifications and the cost of design and construction. The qualifications proposal must be opened and ranked prior to opening the cost proposal;

(4) Requires a political subdivision to award stipends to prequalified offerors under conditions specified in the bill;

(5) Establishes advertising requirements and procedures for submitting and opening proposals and for re-advertising when necessary;

(6) Specifies that payment bonds are required, but the performance bond does not need to cover the design services if the design-builder or subcontractor providing design services carries professional liability insurance in the amount established in the request for proposals;

(7) Requires architects, engineers, landscape architects, and land surveyors providing services for the design-builder to be licensed or authorized in this state unless the subcontractors performing the services are properly licensed; and

(8) Requires the political subdivision planning a design-build project to retain an architect or engineer to assist with specified duties regarding the project.

PROPONENTS: Supporters say that design-build is a useful tool for political subdivisions to use on certain types of projects where the city or town has a small, but knowledgeable, staff. The design-build process eliminates a great deal of administrative work and transaction costs. The bill requires advertising for contracts and ensures that licensed subcontractors are used.

Testifying for the bill were Representative Hough; Mark Deaton; Dennis Randoff; Builders Association of Missouri; Missouri Municipal League; Burns and McDonnell Engineering; Missouri Association of Municipal Utilities; and Thomas Whittaker, JE Dune Construction Co.

OPPONENTS: Those who oppose the bill say that the \$1 million threshold is very low and could encourage small political subdivisions to take on tasks that they are not capable of supervising properly. Use of construction managers to perform some work themselves creates a potential conflict of interest.

Testifying against the bill were Galen Lif, American Institute of Architects of Missouri; Site Improvement Association; and Construction Employers Coalition.

OTHERS: Others testifying on the bill say that the use of Internet-based virtual bid platforms might be useful, and that design-build can be used for very small projects.

Testifying on the bill was Kansas City, Missouri.