



# Senate

General Assembly

**File No. 157**

February Session, 2012

Substitute Senate Bill No. 33

*Senate, March 29, 2012*

The Committee on Transportation reported through SEN. MAYNARD of the 18th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING DEPARTMENT OF TRANSPORTATION  
PROJECT DELIVERY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) The Commissioner of  
2 Transportation may, as an alternative to using a design-bid-build  
3 contract pursuant to chapter 238 of the general statutes, designate  
4 specific projects to be completed using a (1) construction-manager-at-  
5 risk contract with a guaranteed maximum price, or (2) design-build  
6 contract.

7 (b) If the commissioner designates a project to use a construction-  
8 manager-at-risk contract with a guaranteed maximum price, the  
9 commissioner may enter into a single contract with an architect or  
10 engineer for the project design, as well as a single contract with a  
11 construction-manager-at-risk contractor who will provide input during  
12 the design process and be responsible for the construction of the  
13 project by selecting trade subcontractors using a low sealed bid  
14 process. The construction-manager-at-risk contract shall have an

15 established guaranteed maximum price. The commissioner may select  
16 the architect, engineer or contractor from among the contractors  
17 selected and recommended by a selection panel. Any such contract for  
18 such project shall be based upon competitive proposals received by the  
19 commissioner, who shall give notice of the project, by advertising at  
20 least once, in a newspaper having a substantial circulation in the area  
21 in which the project is located. Award of any such contract shall be  
22 based upon the general conditions and staff costs plus qualitative  
23 criteria. The commissioner shall establish all criteria, requirements and  
24 conditions of such proposals and award and shall have sole  
25 responsibility for all other aspects of the project. Any contract shall  
26 clearly state the responsibilities of the contractor to deliver a completed  
27 and acceptable project on a date certain, the maximum cost of the  
28 project, and, if applicable, as a separate item, the cost of property  
29 acquisition.

30 (c) If the commissioner designates a project to use a design-build  
31 contract, the commissioner may enter into a single contract with the  
32 design-builder, who the commissioner may select from among the  
33 design-builders selected and recommended by a selection panel. The  
34 contract shall (1) include, but not be limited to, such project elements  
35 as site acquisition, permitting, engineering design and construction,  
36 and (2) be based on competitive proposals received by the  
37 commissioner, who shall give notice of the project and specifications  
38 for the project, by advertising, at least once, in a newspaper having a  
39 substantial circulation in the area in which the project is located.  
40 Award of the design-build contract shall be based on a predetermined  
41 metric provided to proposers in advance of technical proposal  
42 development. This metric may be unique to each project, but shall  
43 consist of a combined score of qualifications and past performance of  
44 the proposer, technical merit of the proposal and cost. The  
45 commissioner shall establish a selection panel for each project to score  
46 the qualifications and past performance and technical portion of the  
47 proposal using the predefined scoring metric. The sealed cost portion  
48 of the proposal shall be opened in a public ceremony only after the  
49 qualifications and past performance and technical portions of the

50 proposals have been scored. The commissioner shall determine all  
 51 criteria, requirements and conditions for such proposals and award  
 52 and shall have sole responsibility for all other aspects of the contract.  
 53 Such contract shall state clearly the responsibilities of the design-  
 54 builder to deliver a completed and acceptable project on a date certain,  
 55 the maximum cost of the project, and, if applicable, as a separate item,  
 56 the cost of property acquisition.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

**Statement of Legislative Commissioners:**

In subsections (b) and (c), grammatical changes were made for readability.

**TRA**      *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Department of Transportation	TF - See Below	See Below	See Below

Note: TF=Transportation Fund

**Municipal Impact:** None

**Explanation**

The fiscal impact of allowing the Department of Transportation (DOT) to use two alternative contracting methods for highway and maintenance projects cannot be determined at this time because projects have not been identified as candidates. The impact of using either "construction-manager-at-risk" contracts with a guaranteed maximum price or design-build contracts will depend on (1) type of project, (2) who provides architectural/engineering services and (3) bid selection process. However, it is assumed that the department would not move forward on projects based on alternative contracts unless they resulted in cost savings compared to current contracting procedures.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****SB 33*****AN ACT CONCERNING DEPARTMENT OF TRANSPORTATION PROJECT DELIVERY.*****SUMMARY:**

This bill authorizes the transportation commissioner to designate that highway construction and maintenance projects be built using either a (1) “construction-manager-at-risk” contract with a guaranteed maximum price or (2) design-build contract, as alternatives to the department’s traditional “design-bid-build” process. It prescribes how he must do this. In practice, only contractors the Department of Transportation (DOT) has prequalified are eligible to be awarded DOT construction contracts (see BACKGROUND). The bill authorizes the alternative selection processes but does not refer to prequalification.

EFFECTIVE DATE: Upon passage

**DIFFERENT BIDDING METHODS**

“Design-bid-build,” “construction-manager-at-risk,” and “design-build” use different approaches to design and build construction projects. The methods chiefly differ in how they assign responsibility for design and construction services.

1. In design-bid-build, the most traditional method, the owner has separate contracts with the designer and the builder, and the project design is completed before bids are solicited for a construction contract.
2. In construction-manager-at-risk (CMAR), the owner generally contracts with a single construction manager, who works with the designer and then provides labor, materials, and project management during construction. The CMAR method typically guarantees the maximum cost of the work.

3. In the design-build approach, the owner contracts with a single entity that both designs and builds the project.

DOT has traditionally put highway projects out to bid under the “design-bid-build” method, and current law does not authorize it to use the other methods. The bill allows the commissioner to designate specific highway construction projects to be put to bid under either a CMAR or design-build contract.

### **CMAR CONTRACT PROCEDURE**

Under the bill, the commissioner may enter into one contract with an architect or engineer for the project design, and a second contract with a CMAR contractor. The CMAR contractor is responsible for (1) providing input during the design process and (2) building the project, using a low sealed bid process to select trade subcontractors. It is not clear if the CMAR contractor must select the lowest responsible bidder (see BACKGROUND). The CMAR contract must include a guaranteed maximum price.

The bill allows the commissioner to select the architect, engineer, or contractor from among the contractors selected and recommended by a selection panel. It is not clear if the selection panel selects and recommends architects and engineers or just contractors. The bill also does not discuss panel membership or how it is appointed, although current law establishes within DOT at least one panel to evaluate and select DOT consultants (CGS § 13b-20c).

The CMAR contract must be based on competitive proposals received by the commissioner after he has advertised the project at least once in a newspaper with a substantial circulation in the project area. The commissioner must establish the criteria, requirements, and conditions of the proposals and the award. He must award the contract based on the general conditions and staff costs, plus qualitative criteria. It is not clear to what “general conditions” and “staff costs” refer. The bill makes the commissioner solely responsible for other aspects of the project, but does not specify what these might be.

The contract must clearly state (1) the contractor’s responsibilities to

deliver a completed and acceptable project on a particular date; (2) the project's maximum cost; and (3) if applicable, the cost of acquiring the property as a separate item.

## **DESIGN BUILD CONTRACT**

Under this alternative, the bill allows the commissioner to enter into a single contract with a design-builder, whom he may select from among those a selection panel recommends. The commissioner must advertise the project and its specifications at least once in a newspaper with a substantial circulation in the project area;

The contract must (1) include such project elements as site acquisition, permitting, engineering design, and construction and (2) be based on competitive proposals. The commissioner must award the contract based on a predetermined "metric" provided to design-builders before they develop technical proposals. This metric may be unique to a project, but must consist of a score combining the (1) proposer's qualifications and past performance, (2) proposal's technical merit, and (3) project cost. The commissioner must establish a selection panel for each project to score the first two elements according to the applicable metric. The proposal's sealed cost portion must be opened in a public ceremony only after this scoring has taken place.

As with the CMAR process, the commissioner must determine all criteria, requirements, and conditions for the proposals and award, and is solely responsible for other aspects of the contract. Also, as with the CMAR process, the contract must clearly state (1) the design builder's responsibility to deliver a complete and acceptable project on a particular date; (2) the project's maximum cost; and (3) if applicable as a separate item, the cost of acquiring the property.

## **BACKGROUND**

### ***Lowest Responsible Bidder***

By law, the DOT commissioner must award contracts to build, alter, reconstruct, improve, relocate, widen, or change the grade of, sections of state highways or bridges to the lowest bidder deemed responsible (CGS § 13a-95).

**Prequalification**

DOT's *Construction Contract Bidding and Award Manual* states that "with few exceptions, only contractors prequalified by the department are eligible to receive awards of department construction contracts." Prequalification is the process by which the department determines which general contractors are qualified and eligible for different types of DOT contracts.

**COMMITTEE ACTION**

Transportation Committee

Joint Favorable

Yea 37 Nay 0 (03/14/2012)