



**Substitute Senate Bill No. 33**

**Public Act No. 12-70**

**AN ACT CONCERNING DEPARTMENT OF TRANSPORTATION  
PROJECT DELIVERY AND PROJECT LABOR AGREEMENTS FOR  
CERTAIN PUBLIC WORKS PROJECTS.**

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

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

(b) If the commissioner designates a project to use a construction-manager-at-risk contract with a guaranteed maximum price, the commissioner may enter into a single contract with an architect or engineer for the project design, as well as a single contract with a construction-manager-at-risk contractor who will provide input during the design process and be responsible for the construction of the project by selecting trade subcontractors using a low sealed bid process. The construction-manager-at-risk contract shall have an established guaranteed maximum price. The commissioner may select the architect, engineer or contractor from among the contractors selected and recommended by a selection panel. Any such contract for

***Substitute Senate Bill No. 33***

such project shall be based upon competitive proposals received by the commissioner, who shall give notice of the project, by advertising at least once, in a newspaper having a substantial circulation in the area in which the project is located. Award of any such contract shall be based upon the general conditions and staff costs plus qualitative criteria. The commissioner shall establish all criteria, requirements and conditions of such proposals and award and shall have sole responsibility for all other aspects of the project. Any contract shall clearly state the responsibilities of the contractor to deliver a completed and acceptable project on a date certain, the maximum cost of the project, and, if applicable, as a separate item, the cost of property acquisition.

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

**Substitute Senate Bill No. 33**

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

Sec. 2. (NEW) (*Effective from passage*) (a) For any contract entered into pursuant to section 1 of this act, the Commissioner of Transportation shall: (1) Perform project development services. Such services may include, but need not be limited to, the size, type and desired design character of the project, performance specifications, quality of materials, equipment, workmanship, preliminary plans or any other information necessary for the department to issue a bid package, and (2) perform oversight of projects and provide inspection services, which shall include, but need not be limited to, inspection of construction, surveying, testing, monitoring of environmental compliance, quality control inspection and quality assurance audits.

(b) (1) After the first two projects performed with contracts authorized pursuant to section 1 of this act, the Commissioner of Transportation shall perform all development and inspection work, as described in subsection (a) of this section, using department employees. The Commissioner of Administrative Services shall place the positions required for this work on continuous recruitment pursuant to the provisions of section 5-216 of the general statutes. In addition, employees may be appointed to durational positions to reduce the need for inspection or development work to be performed by consultants. Such employees may be appointed as engineers if they have met the education, knowledge and training requirements required by the Department of Administrative Services job classification to durational positions without examination to reduce

**Substitute Senate Bill No. 33**

the need for inspection or development work to be performed by consultants. Any contract entered into with a consultant for the initial project bid in accordance with section 1 of this act shall contain a provision that provides for training the employees of the Department of Transportation in the process for bidding and managing projects entered into in accordance with said section 1.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, there shall be a transition period during which the Commissioner of Transportation may authorize the continued use of consultants if necessary to complete contracts authorized pursuant to section 1 of this act. During this period, the commissioner shall make all reasonable efforts to perform development and inspection work, as described in subsection (a) of this section using, where such employees are available, department employees and reducing, and where possible eliminating, the dependency on outside consultants. The authority granted by this subsection to use consultants on contracts entered into pursuant to section 1 of this act shall be subject to a termination date which shall be the earlier of (A) the date that the Governor transmits to the joint standing committee of the General Assembly having cognizance of matters relating to transportation a letter certifying that the use of consultants is no longer necessary to complete projects authorized pursuant to said section 1, or (B) January 1, 2019. This authority shall not continue beyond such termination date unless affirmatively reauthorized by the action of both houses of the General Assembly.

Sec. 3. (NEW) (*Effective from passage*) The Commissioner of Transportation shall work to reduce the number of consultants who are engaged to review work performed by other outside consultants and shall report to the joint standing committee of the General Assembly having cognizance of matters relating to transportation on or before July 1, 2013, and annually thereafter on the status of such

**Substitute Senate Bill No. 33**

effort.

Sec. 4. (NEW) (*Effective from passage*) For the purposes of this section and sections 5 and 6 of this act:

(1) "Project labor agreement" means a prehire agreement covering the terms and conditions for all persons who will perform work on a specific public works project;

(2) "Public entity" means the state and any agency, instrumentality or political subdivision thereof;

(3) "Public works project" means the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any other public works by a public entity.

Sec. 5. (NEW) (*Effective from passage*) (a) Notwithstanding the provisions of any general statute, regulation or requirement regarding procurement of goods or services, a public entity may require a project labor agreement for any public works project when such public entity has determined, on a project-by-project basis and acting within its discretion, that it is in the public's interest to require such an agreement. In making such determination, the public entity may consider the effects a project labor agreement may have on (1) the efficiency, cost and direct and indirect economic benefits to the public entity; (2) the availability of a skilled workforce to complete the public works project; (3) the prevention of construction delays; (4) the safety and quality of the public works project; (5) the advancement of minority and women-owned businesses; and (6) employment opportunities for the community.

(b) A public entity's decision to require a project labor agreement shall not be evidence of fraud, corruption or favoritism.

(c) Any project labor agreement required by a public entity

**Substitute Senate Bill No. 33**

pursuant to this section shall: (1) Set forth mutually binding procedures for resolving disputes that can be implemented without delay; (2) include guarantees against a strike, lockout or other concerted action aimed at slowing or stopping the progress of a public works project; (3) ensure a reliable source of skilled and experienced labor; (4) include goals for the number of apprentices and for a percentage of work to be performed by minorities, women and veterans; (5) invite all contractors to bid on the project without regard to whether the employees of any such contractor are members of a labor organization, as defined in section 31-101 of the general statutes; (6) permit the selection of the lowest responsible qualified bidder without regard to labor organization affiliation; (7) not require compulsory labor organization membership of employees working on the project; and (8) bind all contractors and subcontractors to the terms of the agreement.

(d) Any bidder for a public works project that does not agree to abide by the conditions of the project labor agreement or a requirement to negotiate a project labor agreement shall not be regarded as a responsible qualified bidder for such project.

Sec. 6. (NEW) (*Effective from passage*) Prior to a public entity entering into a design-build contract for new construction of a public school or for renovation or reconstruction of an existing public school with a value greater than or equal to ten million dollars, such public entity shall determine if the use of a project labor agreement would be in the public's interest in accordance with subsection (a) of section 5 of this act.

Sec. 7. (NEW) (*Effective from passage*) The provisions of sections 5 and 6 of this act are severable and if any provision is determined to contravene state or federal law, the remainder of sections 5 and 6 of this act shall remain in full force and effect.

***Substitute Senate Bill No. 33***