

AN ACT

ENTITLED, An Act to authorize construction management services to be employed on public improvement projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, construction management, means any project delivery system based on an agreement whereby a construction manager provides leadership to the construction process through a series of services to the public corporation.

Section 2. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of this chapter, the term, construction management services, means the following:

- (1) Services provided in the planning and design phases of a public improvement project including the following:
 - (a) Consulting with, advising, assisting, and making recommendations to the public corporation and architect or engineer on all aspects of planning for project construction;
 - (b) Reviewing all plans and specifications as they are being developed and making recommendations with respect to construction feasibility, availability of material and labor, time requirements for procurement and construction, and projected costs;
 - (c) Making, reviewing, and refining budget estimates based on the public corporation's program and other available information;
 - (d) Making recommendations to the public corporation and the architect or engineer regarding the division of work in the plans and specifications to facilitate bidding and awarding of contracts;
 - (e) Soliciting the interest of capable contractors and assisting the public corporation in

- taking bids on the project;
 - (f) Analyzing the bids received and awarding contracts; and
 - (g) Preparing and monitoring a progress schedule during the design phase of the project and preparation of a proposed construction schedule; and
- (2) Services provided in the construction phase of the public improvement project including the following:
- (a) Maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the contractors on the project;
 - (b) Observing the work as it is being performed for general conformance with working drawings and specifications;
 - (c) Establishing procedures for coordinating among the public corporation, architect or engineer, contractors, and construction manager with respect to all aspects of the project and implementing labor policy in conformance with the requirements of the public corporation's policy and making recommendations;
 - (d) Reviewing and processing all applications for payment by involved contractors and material suppliers in accordance with the terms of the contract;
 - (e) Making recommendations for and processing requests for changes in the work and maintaining records of change orders;
 - (f) Scheduling and conducting job meetings to ensure orderly progress of the work;
 - (g) Developing and monitoring a project progress schedule, coordinating and expediting the work of all contractors, and providing periodic status reports to the owner and the architect and engineer; and
 - (h) Establishing and maintaining a cost control system and conducting meetings to review costs.

Section 3. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, construction manager, means any person or entity providing construction management services for a public corporation, and either a construction manager-agent or construction manager-at-risk.

Section 4. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, construction manager-agent, means any construction manager that provides construction management services to a public corporation in a fiduciary capacity. No construction manager-agent may contract directly with any contractor or supplier for the project.

Section 5. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, construction manager-at-risk, means any construction manager that assumes the risk for construction, rehabilitation, alteration, or repair of a public improvement, and provides construction management services to the public corporation. The construction manager-at-risk shall directly contract with subcontractors and suppliers for the project.

Section 6. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

Any public corporation may engage a construction manager if planning, designing, or constructing a public improvement, or if improving, altering, or repairing a public improvement. However, no public corporation is required to engage a construction manager.

Section 7. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

Unless the construction manager-agent is an employee of the public corporation and provides the construction management services pursuant to such employment, no public corporation may engage the services of a construction manager except as follows:

(1) The public corporation shall first make the following determinations:

(a) That it is in the public interest to utilize the services of a construction manager; and

- (b) That the construction management services would not unreasonably duplicate and would be in addition to the normal scope of separate architect or engineer contracts;
- (2) Notwithstanding any other provisions of this chapter, no construction manager may contract to perform actual construction on the project, except as follows:
 - (a) The construction manager may perform general conditions of the construction contract as required by the owner;
 - (b) The construction manager is a construction manager-at-risk and was solicited through a qualification-based request for proposals method of procurement as provided in section 8 of this Act and the construction manager-at-risk, for any actual construction contracted by the construction manager-at-risk to be performed on the project, provides payment and performance bonds and competitively bids the work as required by any statute governing bidding and bonding for public improvement projects;
 - (c) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1; or
 - (d) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2; and
- (3) No person, firm, or corporation may act as a construction manager-agent and also as a contractor on any public improvement, except as follows:
 - (a) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1; or
 - (b) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2.

Section 8. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

Each qualification based request for proposals required by subsection 7(2)(b) of this Act to enter into a construction manager-at-risk services contract where the construction manager-at-risk intends to actually perform construction on the project, shall meet the following criteria:

- (1) The public corporation shall, prior to issuing any request for proposals to enter in a construction management services contract, establish and publish procedures for the solicitation and award of such contracts, which procedures shall include the following:
 - (a) The procedures and standards to be used to qualify construction managers;
 - (b) The procedures for preparing and submitting proposals;
 - (c) The procedures for evaluating proposals;
 - (d) The procedures for negotiations between the public corporation and those submitting proposals prior to the acceptance of a proposal. The procedures shall contain safeguards to preserve the confidential information and proprietary information supplied by those submitting proposals; and
 - (e) The procedures for awarding construction management services contracts;
- (2) A request for proposals to enter into a construction management services contract shall contain the following elements:
 - (a) The identity of the public corporation;
 - (b) A description of the proposed public improvement;
 - (c) A description of the qualifications the construction manager will be required to have;
 - (d) The procedures to be followed for submitting proposals, the criteria for evaluation of a proposal and its relative weight, and procedures for making awards;
 - (e) The proposed terms and conditions for the construction management services contract, including a description of the scope of services to be provided;
- (3) Notice of any request for proposals shall be advertised in accordance with the provisions of § 5-18-3;
- (4) After obtaining and evaluating proposals, a public corporation may accept the proposal it

considers the most advantageous to the public corporation. Acceptance of a proposal shall be by written notice to the construction manager submitting the accepted proposal, and by simultaneously notifying in writing the other construction managers that their proposals were not accepted; and

- (5) The public corporation shall reserve the right to reject any or all proposals submitted.

Section 9. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

Each contract for a public improvement shall have a licensed design professional actively involved in the project from the start of design through final completion as required by chapter 36-18A.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1111

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1111
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State