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Critical Changes To Iowa's Public Bidding Law

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Legislative Update Alert – SF 183

On Tuesday, June 14, 2022, Governor Reynolds signed into law SF 183 (Iowa Legislature - BillBook) related to alternative delivery methods for public improvement projects. This bill has three main components:

- Creates a new Chapter 26A in the Iowa Code allowing guaranteed maximum price contracts through the construction manager-at-risk alternative delivery method for certain public improvement projects (effective July 1, 2022)
- Prohibits the fee-based selection of design professionals under Chapter 26 of the Iowa Code (effective July 1, 2022)
- Explicitly prohibits the state board of regents from entering into design-build contracts under Section 262.34 of the Iowa Code (effective June 14, 2022)

Background. All public improvement projects require a combination of services from design professionals, contractors, and others in order to complete a project. "Project delivery methods" refer to the different methods for structuring the relationships among parties, the distinct roles and responsibilities of each party, and the general processes utilized in order to deliver a particular project. For most governmental entities, such as cities, counties, school districts, and water districts, Chapter 26 provides the roadmap for the public bidding process. Prior to the enactment of SF 183, Chapter 26 authorized the design-bid-build project delivery method, and the negotiation of guaranteed maximum price contracts with a construction manager or one contractor was prohibited. Also, there were no restrictions on the fee-based selection of design professionals in Chapter 26. Additionally, the state board of regents, which is not governed by Chapter 26, was utilizing multiple project delivery methods, including the design-bid-build, construction manager-at-risk, and design-build methods under Section 262.34 and its own alternative delivery method guidelines.

Impact. SF 183 gives governmental entities subject to Chapter 26 and the state board of regents an alternative to the traditional design-bid-build delivery method. It creates a

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new Chapter 26A, which sets forth the rules allowing guaranteed maximum price contracts through the construction manager-at-risk delivery method. Construction manager-at-risk means a single contractor or entity that assumes the risk for the project and provides consultant services to the governmental entity in the development and design phases, working collaboratively with the architect and other design professionals. A guaranteed maximum price contract or GMP means a negotiated fixed or guaranteed maximum price contract between the governmental entity and the construction manager-at-risk. The Chapter 26A rules are comprehensive, and require specific public procurement processes for the selection of both the construction manager-at-risk and the subcontractors performing the work on the project.

Additionally, SF 183 amends Section 262.34, which governs contract procurement for the state board of regents, to explicitly prohibit the use of the design-bid project delivery.

Finally, SF 183's prohibition of the fee-based selection of design professionals means that governmental entities can no longer use price as the primary factor in selecting a design professional.

If you have any questions about SF 183 and its impact, or if you are considering the use of the construction manager-at-risk project delivery method, please don't hesitate to contact us.

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