

SENATE BILL No. 642

By Committee on Ways and Means

2-19

9 AN ACT concerning the procurement of design and construction serv-
10 ices for unified school district improvements contracts; enacting the
11 Kansas unified school district alternative project delivery building con-
12 struction procurement act.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. Sections 1 through 7, and amendments thereto, shall be
16 known and may be cited as the Kansas unified school district alternative
17 project delivery building construction procurement act.

18 Sec. 2. As used in the Kansas unified school district alternative pro-
19 ject delivery construction procurement act, unless the context expressly
20 provides otherwise:

21 (a) "Act" means the Kansas unified school district alternative project
22 delivery building construction procurement act.

23 (b) "Board" means board of education of every unified school district
24 in Kansas, as defined in K.S.A. 72-8201, and amendments thereto, with
25 the authority to award public contracts for building design and
26 construction.

27 (c) "Alternative project delivery" means an integrated comprehensive
28 building design and construction process, including all procedures, ac-
29 tions, sequences of events, contractual relations, obligations, interrela-
30 tions and various forms of agreement all aimed at the successful comple-
31 tion of the design and construction of buildings and other structures
32 whereby a construction manager or general contractor or design build
33 team is selected based on a qualifications and best value approach.

34 (d) "Ancillary technical services" include, but shall not be limited to,
35 geology services and other soil or subsurface investigation and testing
36 services, surveying, adjusting and balancing air conditioning, ventilating,
37 heating and other mechanical building systems and testing and consultant
38 services that are determined by the board to be required for the project.

39 (e) "Architectural services" means those services described by sub-
40 section (e) of K.S.A. 74-7003, and amendments thereto.

41 (f) "Best value selection" means a selection based upon project cost,
42 qualifications and other factors.

43 (g) "Building construction" means furnishing labor, equipment, ma-

1 material or supplies used or consumed for the design, construction, altera-
2 tion, renovation, repair or maintenance of a building or structure. Build-
3 ing construction does not include highways, roads, bridges, dams,
4 turnpikes or related structures or stand-alone parking lots.

5 (h) “Design-build” means a project for which the design and con-
6 struction services are furnished under one contract.

7 (i) “Design-build contract” means a contract between the board and
8 a design-builder to furnish the architecture or engineering and related
9 design services required for a given public facilities construction project
10 and to furnish the labor, materials and other construction services for
11 such public project.

12 (j) “Construction services” means the process of planning, acquiring,
13 building, equipping, altering, repairing, improving or demolishing any
14 structure or appurtenance thereto, including facilities, utilities or other
15 improvements to any real property, excluding stand-alone parking lots.

16 (k) “Construction management at-risk services” means the services
17 provided by a firm which has entered into a contract with the board to
18 be the construction manager or general contractor for the value and
19 schedule of the contract for a project, which is to hold the trade contracts
20 and execute the work for a project in a manner similar to a general con-
21 tractor, and which is required to solicit competitive bids for the trade
22 packages developed for the project and to enter into the trade contracts
23 for a project with the lowest responsible bidder therefor. Construction
24 management at-risk services may include, but are not limited to sched-
25 uling, value analysis, system analysis, constructability reviews, progress
26 document reviews, subcontractor involvement and prequalification, sub-
27 contractor bonding policy, budgeting and price guarantees and construc-
28 tion coordination.

29 (l) “Construction management at-risk contract” means the contract
30 whereby the board acquires from a construction manager or general con-
31 tractor a series of preconstruction services and an at-risk financial obli-
32 gation to carry out construction under a specified cost agreement.

33 (m) “Construction manager or general contractor” means any indi-
34 vidual, partnership, joint venture, corporation, or other legal entity who
35 is a member of the integrated project team with the board, design pro-
36 fessional and other consultants that may be required for the project, who
37 utilizes skill and knowledge of general contracting to perform pre-
38 construction services and competitively procures and contracts with specialty
39 contractors assuming the responsibility and the risk for construction de-
40 livery within a specified cost and schedule terms including a guaranteed
41 maximum price.

42 (n) “Cost plus guaranteed maximum price contract” means a cost-
43 plus-a-fee contract with a guaranteed maximum price. This includes the

- 1 sum of the construction manager's fee, the construction manager's con-
2 tingency, the construction manager's general conditions, all the subcon-
3 tracts, plus an estimate for unbid subcontracts. The construction manager
4 agrees to pay for costs that exceed the guaranteed maximum price and
5 are not a result of changes in the contract documents.
- 6 (o) "Design-builder" means any individual, partnership, joint ven-
7 ture, corporation or other legal entity that furnishes the architectural or
8 engineering services and construction services, whether by itself or
9 through subcontracts.
- 10 (p) "Design criteria consultant" means a person, corporation, part-
11 nership or other legal entity duly registered and authorized to practice
12 architecture or professional engineering in this state pursuant to K.S.A.
13 74-7003, and amendments thereto, and who is employed by contract to
14 the board to provide professional design and administrative services in
15 connection with the preparation of the design criteria package.
- 16 (q) "Design criteria package" means performance-oriented specifi-
17 cations for the public construction project sufficient to permit a design-
18 builder to prepare a response to the board's request for proposals for a
19 design-build project.
- 20 (r) "Engineering services" means those services described by subsec-
21 tion (i) of K.S.A. 74-7003, and amendments thereto.
- 22 (s) "Guaranteed maximum price" means the cost of the work as de-
23 fined in the contract.
- 24 (t) "Selection recommendation committee" means school board or a
25 committee comprised of school board members.
- 26 (u) "Parking lot" means a designated area constructed on the ground
27 surface for parking motor vehicles. A parking lot included as part of a
28 building construction project shall be subject to the provisions of this act.
29 A parking lot designed and constructed as a stand-alone project shall not
30 be subject to the provisions of this act.
- 31 (v) "Preconstruction services" means a series of services that can in-
32 clude, but are not necessarily limited to: Design review, scheduling, cost
33 control, value engineering, constructability evaluation and preparation
34 and coordination of bid packages.
- 35 (w) "Project services" means architectural, engineering services, land
36 surveying, construction management at-risk services, ancillary technical
37 services or other construction-related services determined by the board
38 to be required by the project.
- 39 (x) "Public construction project" means the process of designing, con-
40 structing, reconstructing, altering or renovating a unified school district
41 building or other structure. Public construction project does not include
42 the process of designing, constructing, altering or repairing a public high-
43 way, road, bridge, dam, turnpike or related structure.

1 (y) “Stipend” means an amount paid to the unsuccessful proposers
2 to defray the cost of submission of phase II of the design-build proposal.

3 Sec. 3. (a) Notwithstanding any other provision of the law to the con-
4 trary, the board is hereby authorized to institute an alternative project
5 delivery program whereby construction management at-risk or design-
6 build procurement processes may be utilized on public projects pursuant
7 to this act. This authorization for construction management at-risk and
8 design-build procurement shall be for the sole and exclusive use of plan-
9 ning, acquiring, designing, building, equipping, altering, repairing, im-
10 proving or demolishing any structure or appurtenance thereto, including
11 facilities, utilities or other improvements to any real property, but shall
12 not include stand-alone parking lots.

13 (b) The board shall approve those projects for which the use of the
14 alternative project delivery procurement process is appropriate. In mak-
15 ing such determination, the board shall consider the following factors:

16 (1) The likelihood that the alternative project delivery method of pro-
17 curement selected will serve the public interest by providing substantial
18 savings of time or money over the traditional design-bid-build delivery
19 process.

20 (2) The ability to overlap design and construction phases is required
21 to meet the needs of the end user.

22 (3) The use of an accelerated schedule is required to make repairs
23 resulting from an emergency situation.

24 (4) The project presents significant phasing or technical complexities,
25 or both, requiring the use of an integrated team of designers and con-
26 structors to solve project challenges during the design or preconstruction
27 phase.

28 (5) The use of an alternative project delivery method will not en-
29 courage favoritism in awarding the public contract or substantially dimin-
30 ish competition for the public contract.

31 (c) When a board intends to utilize an alternative project delivery
32 method, the board shall allow public comment on this intention at a
33 school board meeting. Notice of this intention shall be clearly stated on
34 the board agenda and in the official newspaper of the school district.
35 Public comment on this intention at a board meeting shall occur before
36 the selection process set forth in this statute may commence.

37 (d) Notwithstanding the provisions of K.S.A. 72-6760, and amend-
38 ments thereto, if the board deems that the project does not qualify for
39 the alternative project delivery methods included under this act, then the
40 construction services for such project shall be obtained pursuant to com-
41 petitive bids and all contracts for construction services shall be awarded
42 to the lowest responsible bidder consistent with the provisions of K.S.A
43 72-6760, and amendments thereto.

1 Sec. 4. Construction management at-risk project delivery procedures
2 shall be conducted as follows:

3 (a) The board shall determine the scope and level of detail required
4 to permit a qualified construction manager or general contractor to sub-
5 mit construction management at-risk proposals in accordance with the
6 request for proposals given the nature of the project.

7 (b) Prior to completion of the construction documents, but as early
8 as during the schematic design phase, the construction manager or gen-
9 eral contractor shall be selected. The project design professional may be
10 employed or retained by the board to assist in the selection process.

11 (c) The board shall publish a notice of the request for qualifications
12 and proposals for the required project services at least 15 days prior to
13 the commencement of such requests in the official newspaper of the
14 school district and with a statewide school board or construction industry
15 association website in accordance with K.S.A. 64-101, and amendments
16 thereto, and in such other appropriate manner as may be determined by
17 the board.

18 (d) The board shall solicit proposals in a three stage qualifications
19 based selection process. Phase I shall be the solicitation of qualifications
20 and prequalifying a minimum of three but no more than five construction
21 manager or general contractors to advance to phase II. Phase II shall be
22 the solicitation of a request for proposal for the project, and phase III
23 shall include an interview with each proposer to present their qualifica-
24 tions and answer questions.

25 (1) Phase I shall require all proposers to submit a statement of qual-
26 ifications which shall include, but not be limited to:

27 (A) Similar project experience;

28 (B) experience in this type of project delivery system;

29 (C) references from design professionals and owners from previous
30 projects;

31 (D) description of the construction manager or general contractor's
32 project management approach; and

33 (E) bonding capacity. Firms submitting a statement of qualifications
34 shall be capable of providing a public works bond in accordance with
35 K.S.A. 60-1111, and amendments thereto, and shall present evidence of
36 such bonding capacity to the board with their statement or qualifications.
37 If a firm fails to present such evidence, such firm shall be deemed un-
38 qualified for selection under this subsection.

39 (2) The board shall evaluate the qualifications of all proposers in ac-
40 cordance with the instructions of the request for qualifications. The board
41 shall prepare a short list containing a minimum of three and maximum
42 of five qualified firms, which have the best and most relevant qualifica-
43 tions to perform the services required of the project, to participate in

1 phase II of the selection process. If the board receives qualifications from
2 less than four proposers, all proposers shall be invited to participate in
3 phase II of the selection process. The board shall have discretion to dis-
4 qualify any proposer that, in the board's opinion, lacks the minimal qual-
5 ifications required to perform the work.

6 (3) Phase II of the process shall be conducted as follows:

7 (A) Prequalified firms selected in phase I shall be given a request for
8 proposal. The request for proposal shall require all proposers to submit
9 a more in depth response including, but not be limited to:

10 (i) Company overview;

11 (ii) experience or references, or both, relative to the project under
12 question;

13 (iii) resumes of proposed project personnel;

14 (iv) overview of preconstruction services;

15 (v) overview of construction planning;

16 (vi) proposed safety plan;

17 (vii) fees, including fees for preconstruction services, fees for general
18 conditions, fees for overhead and profit.

19 (4) Phase III shall be conducted as follows:

20 (A) Once all proposals have been submitted, the selection recom-
21 mendation committee shall interview all of the proposers, allowing the
22 competing firms to present their proposed team members, qualifications,
23 project plan and to answer questions. Interview scores shall not account
24 for more than 50% of the total possible score.

25 (B) The selection recommendation committee shall select the firm
26 providing the best value based on the proposal criteria and weighting
27 factors utilized to emphasize important elements of each project for ap-
28 proval by the board. All scoring criteria and weighting factors shall be
29 identified by the board in the request for proposal instructions to pro-
30 posers. The selection recommendation committee shall proceed to ne-
31 gotiate with and attempt to enter into contract with the firm receiving
32 the best total score to serve as the construction manager or general con-
33 tractor for the project. Should the selection recommendation committee
34 be unable to negotiate a satisfactory contract with the firm scoring the
35 best total score, negotiations with that firm shall be terminated, and the
36 committee shall undertake negotiations with the firm with the next best
37 total score, in accordance with this act.

38 (C) If the selection recommendation committee determines, that it
39 is not in the best interest of the board to proceed with the project pur-
40 suant to the proposals offered, the selection recommendation committee
41 shall reject all proposals. If all proposals are rejected, the board may solicit
42 new proposals using different design criteria, budget constraints or
43 qualifications.

1 (D) The contract to perform construction management at-risk serv-
2 ices for a project shall be prepared by the board and entered into between
3 the board and the firm performing such construction management at-risk
4 services. A construction management at-risk contract utilizing a cost plus
5 guaranteed maximum price contract value shall return all savings under
6 the guaranteed maximum price to the school district.

7 (E) The board or the construction manager at-risk, at the board's
8 discretion shall publish a construction services bid notice in the official
9 newspaper of the school district and website of a statewide school board
10 association or construction industry association and in such other approp-
11 riate manner for the construction manager or general contractor as may
12 be determined by the board. Each construction services bid notice shall
13 include the request for bids and other bidding information prepared by
14 the construction manager or general contractor and the board. The board
15 may allow the construction manager or general contractor to self-perform
16 construction services provided the construction manager or general con-
17 tractor submits a sealed bid proposal under the same conditions as all
18 other competing firms. At the time for opening the bids, the construction
19 manager or general contractor shall evaluate the bids and shall determine
20 the lowest responsible bidder except in the case of self-performed work
21 for which the board shall determine the lowest responsible bidder. The
22 construction manager or general contractor shall enter into a contract
23 with each firm performing the construction services for the project and
24 make a public announcement of each firm selected at the first school
25 board meeting following the selection.

26 Sec. 5. Design-build project delivery procedures shall be conducted
27 as follows:

28 (a) The board shall determine the scope and level of detail required
29 to permit qualified persons to submit design-build proposals in accord-
30 ance with the request for proposals given the nature of the project.

31 (b) Notice of requests for proposals shall be published at least 15
32 days prior to the commencement of such requests in the official news-
33 paper of the school district in accordance with K.S.A. 64-101, and amend-
34 ments thereto, and a website of a statewide school board association or a
35 construction industry association. The board shall publish a notice of a
36 request for proposal with a description of the project, the procedures for
37 submittal and the selection criteria to be used.

38 (c) The board shall establish in the request for proposal a time, place
39 and other specific instructions for the receipt of proposals. Proposals not
40 submitted in strict accordance with such instructions shall be subject to
41 rejection.

42 (d) A request for proposals shall be prepared for each design-build
43 contract containing at minimum the following elements:

- 1 (1) The procedures to be followed for submitting proposals, the cri-
2 teria for evaluation of proposals and their relative weight and the proce-
3 dures for making awards.
- 4 (2) The proposed terms and conditions for the design-build contract.
- 5 (3) The design criteria package.
- 6 (4) A description of the drawings, specifications or other information
7 to be submitted with the proposal, with guidance as to the form and level
8 of completeness of the drawings, specifications or other information that
9 will be acceptable.
- 10 (5) A schedule for planned commencement and completion of the
11 design-build contract.
- 12 (6) Budget limits for the design-build contract, if any.
- 13 (7) Requirements, including any available ratings for performance
14 bonds, payment bonds and insurance.
- 15 (8) Any other information that the board at its discretion chooses to
16 supply, including without limitation, surveys, soil reports, drawings of ex-
17 isting structures, environmental studies, photographs or references to
18 public records.
- 19 (e) The board shall solicit proposals in a three-stage process. Phase I
20 shall be the solicitation of qualifications of the design-build team. Phase
21 II shall be the solicitation of a technical proposal including conceptual
22 design for the project and phase III shall be the proposal of the construc-
23 tion cost.
- 24 (1) The board shall review the submittals of the proposers and assign
25 points to each proposal as prescribed in the instructions of the request
26 for proposal.
- 27 (2) Phase I shall require all proposers to submit a statement of qual-
28 ifications which shall include, but not be limited to, the following:
 - 29 (A) Demonstrated ability to perform projects comparable in design,
30 scope and complexity.
 - 31 (B) References of owners for whom design-build projects have been
32 performed.
 - 33 (C) Qualifications of personnel who will manage the design and con-
34 struction aspects of the project.
 - 35 (D) The names and qualifications of the primary design consultants
36 and contractors with whom the design-builder proposes to subcontract.
37 The design-builder may not replace an identified subcontractor or sub-
38 consultant without the written approval of the board.
 - 39 (E) Firms submitting a statement of qualifications shall be capable of
40 providing a public works bond in accordance with K.S.A. 60-1111, and
41 amendments thereto, and shall present evidence of such bonding capa-
42 bility to the board with their statement of qualifications. If a firm fails to
43 present such evidence, such firm shall be deemed unqualified for selec-

1 tion under this subsection.

2 (3) The board shall evaluate the qualifications of all proposers in ac-
3 cordance with the instructions prescribed in the request for proposal.
4 Qualified proposers selected by the evaluation team may proceed to phase
5 II of the selection process. Proposers lacking the necessary qualifications
6 to perform the work shall be disqualified and shall not proceed to phase
7 II of the process. Under no circumstances shall price or fees be consid-
8 ered as a part of the prequalification criteria. Points assigned in the phase
9 I evaluation process shall not carry forward to phase II of the process. All
10 qualified proposers shall be ranked on points given in phases II and III
11 only. The two phase evaluation and scoring process shall be combined to
12 determine the greatest value to the board.

13 (4) The board shall have discretion to disqualify any proposer, which
14 in the board's opinion, lacks the minimal qualifications required to per-
15 form the work.

16 (5) The board shall prepare a short list containing a minimum of
17 three, but no more than the top five qualified proposers to participate in
18 phase II of the process. If less than four proposers respond, all proposers
19 shall be invited to participate in phase II of the selection process.

20 (6) Phase II of the process shall be conducted as follows:

21 (A) Proposers shall submit their design for the project to the level of
22 detail required in the request for proposal. The design proposal should
23 demonstrate compliance with the requirements set out in request for
24 proposal.

25 (B) Up to 20% of the points awarded to each proposer in phase II
26 may be based on each proposer's qualifications and ability to design, con-
27 struct and deliver the project on time and within budget.

28 (C) The design proposal shall not contain any reference to the cost
29 of the proposal.

30 (D) The design submittals shall be evaluated and assigned points in
31 accordance with the requirements of the request for proposal.

32 (7) Phase III shall be conducted as follows:

33 (A) The phase III proposal shall provide a firm fixed cost of construc-
34 tion. The proposal shall be accompanied by bid security and any other
35 submittals as required by the request for proposal.

36 (B) The proposed contract time, in calendar days, for completing a
37 project as designed by a proposer shall be considered as an element of
38 evaluation in phase III. The request proposal shall establish a user delay
39 value for each proposed calendar day identified in the proposal.

40 (C) Cost and schedule proposals shall be submitted in accordance
41 with the instructions of the request for proposal. Failure to submit a cost
42 proposal on time shall be cause to reject the proposal.

43 (8) Proposals for phase II and III shall be submitted concurrently at

1 the time and place specified in the request for proposal. The phase III
2 cost proposals shall be opened only after the phase II design proposals
3 have been evaluated and assigned points.

4 (9) Phase III proposals shall be opened and read aloud at the time
5 and place specified in the request for proposal. At the same time and
6 place, the evaluation team shall make public its scoring of phase II. Cost
7 proposals shall be evaluated in accordance with the requirements of the
8 request for proposal. In evaluating the proposals, each proposers' adjusted
9 score shall be determined by adding the phase III cost proposal to the
10 product of the proposed contract time and the user delay cost, and divid-
11 ing that sum by the phase II score.

12 (10) The responsive proposer with the lowest total number of points
13 shall be awarded the contract. If the board determines, that it is not in
14 the best interest of the school district to proceed with the project pursuant
15 to the proposal offered by the proposer with the lowest total number of
16 points, the board shall reject all proposals. In such event, all qualified
17 proposers with higher point totals shall receive a stipend pursuant to
18 subsection (e)(12), and the proposer with the lowest total number of
19 points shall receive an amount equal to two times such stipend.

20 (11) If all proposals are rejected, the board may solicit new proposals
21 using different design criteria, budget constraints or qualifications.

22 (12) As an inducement to qualified proposers, the board shall pay a
23 stipend, the amount of which shall be established in the request for pro-
24 posal, to each prequalified design-builder whose proposal is responsive
25 but not accepted. Upon payment of the stipend to any unsuccessful de-
26 sign-build proposer, the board shall acquire a nonexclusive right to use
27 the design submitted by the proposer, and the proposer shall have no
28 further liability for its use by the board in any manner. If the design-build
29 proposer desires to retain all rights and interest in the design proposed,
30 the proposer shall forfeit the stipend.

31 Sec. 6. Every bid proposal conforming to the terms of the advertise-
32 ment, together with the name of the proposer, shall be recorded, and all
33 such records with the name of the successful proposer indicated thereon
34 shall, after award or letting of the contract, be subject to public inspection
35 upon request. The board shall, within five days after award or letting of
36 the contract, publish the name of the successful proposer. The public
37 notice on public display shall show the phase II and III scores and the
38 adjusted final score. The board shall, within five days after award or letting
39 of the contract, have the names of all proposers whose bid proposals were
40 not selected, together with phase II and III scores and the final adjusted
41 score for each, available for public review.

42 Sec. 7. The provisions of the Kansas unified school district alterna-
43 tive project delivery building construction procurement act shall not apply

1 to the process of designing, constructing, altering or repairing stand-alone
2 parking lots.
3 Sec. 8. This act shall take effect and be in force from and after its
4 publication in the statute book.