

2019 DRAFTING REQUEST

Assembly Amendment (AA-AB56)

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 Date: 6/7/2019 May Contact:

Same as LRB:

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Pre Topic:

LFB:.....Wilson-Tepeli -

Topic:

Alternative highway project delivery methods and program

Instructions:

Adopt provisions of 19s0056/1 (from omnibus motion).

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	zwyatt 6/7/2019	anienaja 6/10/2019			
/P1			lparisi 6/10/2019		

FE Sent For: <END>



12/4/2019

LRBb0315/187
ZDW: ... Gunn + cdc

INSERT

LFB:.....Wilson-Tepeli - Alternative highway project delivery methods and program

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 126, line 21: after that line insert:

WS 1-3

3 **2.** Page 673, line 4: after that line insert:

WS 1-4

4 **3.** Page 677, line 17: after that line insert:

WS 1-5

5 **4.** Page 1121, line 4: after that line insert:

WS 1-6

6

(END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBs0056/1
ZDW:cdc

USE AS INSERT

**SENATE SUBSTITUTE AMENDMENT ,
TO SENATE BILL (LRB-2281/1)**

1 **AN ACT to create** 15.463, 84.062 and 85.64 of the statutes; **relating to:**
2 alternative highway project delivery methods, providing an exemption from
3 emergency rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Transportation to conduct a pilot program under which DOT awards six contracts for design-build projects to be completed by 2025.

Under current law, the design and construction of projects are generally two distinct phases. Under this method, often referred to as "design-bid-build," DOT has broad authority to accomplish the design of a project. The construction of a project must be executed by contract based on bids, with DOT awarding the contract to the lowest responsible bidder.

The bill authorizes a design-build method under which design, engineering, construction, and related services are procured through a single contract with a single entity capable of providing the services. The bill creates requirements for designating design-build projects, soliciting and evaluating requests for qualifications and requests for proposals, and awarding design-build contracts.

The bill requires DOT to designate design-build projects and award the following contracts:

1. One low bid design-build contract, which is awarded to the lowest responsible bidder, for a project with an estimated value of \$5,000,000 to \$25,000,000.

2. One best value design-build contract, which is awarded following a calculation of value as provided in the project's request for proposals, for a project with an estimated value of \$25,000,000 to \$75,000,000.

3. One fixed price variable scope design-build contract, which is awarded to the lowest qualified responsible bidder able to provide the best qualitative scope of work at a fixed price, with an estimated value of \$25,000,000 to \$75,000,000.

4. Three contracts, to be determined by DOT, with a total estimated value of not more than \$125,000,000.

The bill creates in DOT an office of innovative program delivery that is responsible for conducting the design-build pilot program. The office is supervised by a director appointed by the DOT secretary. The office is required to prepare a report establishing the program structure and to develop a design-build procurement manual. At the end of the pilot program term, the office must prepare a report for the legislature evaluating the success of the program and joint committee on finance must make a recommendation as to whether the pilot program should be made permanent.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

EBLN INS 1-3

SECTION 15.463 of the statutes is created to read:

15.463 Same; offices. (1) OFFICE OF INNOVATIVE PROGRAM DELIVERY. There is created an office of innovative program delivery in the department of transportation. The director of the office shall be appointed by, and report directly to, the secretary of transportation.

EBLN INS 1-4 (ENDS PAGE 21)

SECTION 84.062 of the statutes is created to read:

84.062 Alternative project delivery. (1) DEFINITIONS. In this section: (a) "Alternative technical concepts" means a proposed alternative to the technical requirements provided by the office in the request for proposals for a project.

1 (b) “Best value design-build contract” means a design-build contract award
2 made following a calculation of value as provided in a request for proposals.

3 (c) “Design-build contract” means a contract for a project under which the
4 design, engineering, construction, and related services are provided by a single
5 design-builder.

6 (d) “Design-builder” means a private legal entity, consortium, or joint venture
7 that proposes to or executes a contract with the office to design, engineer, and
8 construct a project under this section.

9 (e) “Design-build project” means a project for which design, engineering,
10 construction, and related services are procured through a single contract with a
11 single private legal entity, consortium, or joint venture capable of providing the
12 necessary design, engineering, construction, and related services.

13 (f) “Design professional” means a person registered under s. 443.03 or 443.04
14 or a firm, partnership, or corporation registered under s. 443.08.

15 (g) “Director” means the director of the office of innovative program delivery
16 attached to the department under s. 15.463 (1).

17 (h) “Fixed price variable scope design-build contract” means a design-build
18 contract award made to the lowest qualified responsible bidder able to provide the
19 best qualitative scope of work at a price not to exceed a fixed price set by the office.

20 (i) “Low bid design-build contract” means a design-build contract award made
21 to the lowest qualified responsible bidder.

22 (j) “Member” means a private legal entity that is a member of a consortium or
23 joint venture that is a design-builder.

24 (k) “Office” means the office of innovative program delivery attached to the
25 department under s. 15.463 (1).

1 (L) "Project" means a project involving a highway improvement, as defined in
2 s. 84.06 (1) (am).

3 (m) "Qualified responsible bidder" means a design-builder responding to a
4 request for qualifications and that is certified by the technical review committee.

5 (n) "Responsive cost proposal" means a proposal that clearly identifies the costs
6 of all services to be performed by the qualified responsible bidder, including all
7 related fees, wages, and equipment and material costs.

8 (o) "Responsive technical proposal" means a proposal that clearly
9 demonstrates a qualified responsible bidder's understanding of the design,
10 engineering, and construction services to be performed and clearly describes the
11 bidder's approach to the project.

12 (p) "Technical review committee" means the committee appointed under sub.
13 (3).

14 (q) "Value engineering change" means a proposal that provides for a product
15 of equal or improved quality to the product required by the department and that will
16 reduce the project cost, improve safety, or decrease the time to complete the project.

17 **(2) DESIGN-BUILD PROJECTS.** (a) The department shall administer a pilot
18 program under which not more than 6 contracts are awarded for design-build
19 projects to be completed no later than December 31, 2025. The director may not
20 designate a project as a design-build project unless the department is able to clearly
21 define the scope of work.

22 (b) The department may not expend more than \$250,000,000 for 6 design-build
23 contracts designated as follows:

24 1. One low bid design-build contract for a project with an estimated value of
25 not less than \$5,000,000 and not more than \$25,000,000.

1 2. One best value design-build contract for a project with an estimated value
2 of not less than \$25,000,000 and not more than \$75,000,000.

3 3. One fixed price variable scope design-build contract with an estimated value
4 of not less than \$25,000,000 and not more than \$75,000,000.

5 4. Three contracts designated by the director with a total estimated value of not
6 more than \$125,000,000. The department may enter into a low bid design-build
7 contract, best value design-build contract or a fixed price variable scope
8 design-build contract under this subdivision.

9 (c) For each project designated as a design-build project under par. (a), the
10 office shall prepare a written analysis supporting the office's determination that it
11 is the best interests of the state to make the designation. The written determination
12 and supporting materials are subject to inspection under s. 19.35. The written
13 analysis shall include all of the following:

14 1. The extent to which the department can adequately define the project
15 requirements in a proposed scope of design and construction.

16 2. The impact on the projected project schedule and completion date.

17 3. The impact on the projected cost of the project.

18 4. The impact on the quality factors of the project.

19 5. The availability of contractors with experience with design-build projects or
20 other innovative project delivery methods.

21 6. The capability of the department to manage a design-build project with
22 office employees and design consultants.

23 7. The capability of the department to oversee a design-build project with a
24 contractor with experience with design-build projects or other innovative project
25 delivery methods.

1 8. The availability of current department employees qualified to perform
2 design and engineering services required for the design-build project.

3 9. The original character of the product or the services.

4 10. The statutory authority for the designation of the project as a design-build
5 project and how the project furthers the department's statutory duties.

6 11. Whether the design-build project must comply with any federal rule or
7 regulation or any U.S. department of transportation requirement and a statement
8 that the design-build project is in compliance.

9 12. Any other criteria the office determines is necessary.

10 (d) For each project designated under par. (a), the office shall solicit requests
11 for qualifications, requests for proposals, and cost proposals as provided in this
12 section and, subject to sub. (7) (c) and (d), let each project by contract to a qualified
13 responsible bidder.

14 (e) No more than 6 months following the completion of a design-build project
15 designated under this subsection, the office shall prepare a report, with input from
16 the design-builder and the technical review committee, detailing the project, the
17 decision to designate the project as a design-build project, the type of design-build
18 contract let, and recommendations for statutory changes, if any. The office shall
19 provide this report to the joint committee on finance and the senate and assembly
20 standing committees having jurisdiction over transportation matters. The senate
21 and assembly standing committees having jurisdiction over transportation matters
22 shall schedule a hearing on the report not more than 30 days following distribution
23 of the report by the chief clerks of the senate and the assembly. This paragraph does
24 not apply to projects completed after December 31, 2025.

1 **(3) TECHNICAL REVIEW COMMITTEE.** (a) The secretary shall appoint 5 individuals
2 to a technical review committee to evaluate proposals submitted under this section.

3 The committee shall consist of the following:

4 1. An employee of the department representing a regional office of the
5 department who has at least 5 years of experience in the transportation construction
6 industry.

7 2. Two employees of the department representing the division of the
8 department responsible for transportation project development, each of whom have
9 at least 5 years of experience in the transportation construction industry.

10 3. One person representing a state association of architectural, engineering, or
11 design companies.

12 4. One person representing a state association of transportation construction
13 companies.

14 (b) The secretary may not appoint to the technical review committee any person
15 associated, as defined in s. 19.42 (2), with a design-builder. No person appointed to
16 the technical review committee may review proposals under this section when the
17 proposed project could benefit the appointee or the appointee's immediate family, as
18 defined in s. 19.42 (7).

19 (c) A person appointed to the technical review committee is an agent of the
20 department under s. 895.46.

21 (d) Except as otherwise provided in this section, all records of the technical
22 review committee are open to public inspection and copying under s. 19.35 (1).

23 **(4) BIDS.** The office shall solicit design-build proposals in 2 phases. In the first
24 phase, the office shall solicit requests for qualifications under sub. (5) and requests
25 for proposals under sub. (6). The technical review committee shall certify responsible

1 bidders as provided in sub. (5) (c) and shall score technical proposals as provided in
2 sub. (6) (b). In the 2nd phase, the office shall solicit cost proposals and the technical
3 review committee shall evaluate cost proposals as provided in sub. (7).

4 (5) REQUEST FOR QUALIFICATIONS. (a) The office shall prepare a request for
5 qualifications that includes all of the following:

6 1. Minimum required qualifications for certification as a qualified bidder,
7 which shall include all of the following:

8 a. The design and construction experience of the design-builder or member,
9 personnel, and contractors who will manage the design, engineering, and
10 construction aspects of the project. The office may not require a level of experience
11 that will unreasonably restrict competition.

12 b. A requirement that the design-builder or member employ an individual who
13 has no fewer than 5 years of experience in highway construction specific to highway
14 improvement projects in this state.

15 c. A requirement that the design-builder or member be a design professional
16 or will employ or contract with a design professional.

17 d. A sworn statement of the design-builder's financial ability, equipment, and
18 experience in design-build project delivery and any other information the office
19 determines is necessary to determine a bidder's competency.

20 2. Minimum required qualifications for certification as a responsible bidder,
21 which shall include all of the following:

22 a. The design-builder is registered or authorized to do business in this state.

23 b. The design-builder submits a sworn statement that indicates that it has
24 adequate financial resources to complete the work described in the request for

1 qualifications, taking into account any other work the design-builder is currently
2 under contract to complete.

3 c. The design-builder is bondable for the term of the proposed contract and is
4 able to obtain a 100 percent performance bond and a separate 100 percent payment
5 bond.

6 d. If the department has previously contracted with the design-builder or a
7 member, the design-builder or member has a record of satisfactorily completing
8 projects. In making this determination, the technical review committee shall
9 consider if the design-builder or the member has completed all contracts in
10 accordance with drawings and specifications, diligently pursued execution of the
11 work and completed contracts according to the time schedule, fulfilled guarantee
12 requirements of contracts, and complied with applicable safety program
13 requirements. The technical review committee may not consider whether a
14 design-builder or member exercised legal rights specified in statute or rule or under
15 a contract with the department.

16 e. The design-builder or a member is not on a list maintained by the
17 department identifying persons ineligible to bid due to suspension or debarment or
18 on a list that the department of administration maintains for persons who violated
19 statutory provisions or administrative rules relating to construction.

20 f. The design-builder or a member has been in business for at least 12 months.

21 g. The design-builder or a member has served as a prime contractor on no fewer
22 than 5 projects administered by the department during the previous 5 calendar
23 years.

1 h. The design-builder can provide information to the technical review
2 committee upon request about ownership, management, and control of the
3 design-builder.

4 i. The design-builder or a member has not been debarred from any government
5 contracts and has not been found to have committed tax avoidance or evasion in any
6 jurisdiction in the previous 10 years.

7 j. The design-builder has not been disciplined under a professional license in
8 any jurisdiction in the previous 10 years.

9 k. No design professional employed by the design-builder or a member or that
10 the design-builder will contract with has been disciplined in any jurisdiction under
11 a license that is currently in use.

12 3. Information about bid procedures and the proposed project, including all of
13 the following:

14 a. The type of contract to be awarded.

15 b. The selection criteria for recommendation of design-builders for phase 2.

16 c. Project requirements, including a scope of work statement and a schedule.

17 d. The required completion date of the project.

18 e. A description of requirements for the technical proposal for the project.

19 (b) The office shall advertise the request for qualifications by publication of a
20 class 1 notice, as defined in s. 985.07 (1), in the official state newspaper and on the
21 department's Internet site. The office may place similar notices in publications likely
22 to inform potential bidders of the project. The office shall issue a request for
23 qualifications or provide information as to where the request for qualifications may
24 be obtained to any person, without regard to the qualifications of the person. The
25 office shall include in all advertisements under this paragraph the location and scope

1 of work, the amount of bid guarantee required, the date, time, and place of bid or
2 proposal opening, and the date when and place where plans will be available.

3 (c) The technical review committee shall certify at least 2 but not more than 4
4 design-builders as qualified responsible bidders. If the office does not receive at
5 least 2 responses to the request for qualifications or if the technical review committee
6 certifies only one design-builder as a qualified responsible bidder, the office may
7 re-advertise or cancel the project.

8 **(6) REQUEST FOR PROPOSALS.** (a) The office shall prepare a request for proposals
9 for each design-build contract that includes all the following:

10 1. The name, title, address, and telephone numbers of persons to whom
11 questions concerning the proposal should be directed.

12 2. The procedures to be followed for submitting proposals, including how
13 proposals must be delivered, the date and time by which they must be received, and
14 the name and address of the person who is to receive them.

15 3. The date and time of the pre-proposal conference, if any.

16 4. A requirement that a technical proposal and a cost proposal be submitted in
17 separate sealed proposals at the same time.

18 5. A clear description of the scope of all design, engineering, and construction
19 work.

20 6. The criteria for evaluating proposals and their relative weight, if applicable.

21 7. The design criteria package, including a description of drawings,
22 specifications, or other information to be submitted with the proposals, which shall
23 allow the design-builder to use innovative projects meeting the criteria.

24 8. The project schedule and budget limits, if any.

25 9. The proposed terms and conditions of the contract.

1 10. Requirements relating to performance bonds, payments bonds, and
2 insurance.

3 11. Amount of stipend, if any.

4 12. The procedures for awarding a contract.

5 13. A process for the technical review committee to review and accept
6 alternative technical concepts and value engineering change proposals.

7 14. A requirement that the design-builder perform not less than 30 percent of
8 the construction services under the contract with labor provided by employees of the
9 design-builder or member and equipment owned or rented by the design-builder or
10 member.

11 15. Any other information the office determines is necessary.

12 (b) The technical review committee shall evaluate each technical proposal,
13 which may include a confidential interview, and shall assign points in accordance
14 with the request for proposals and subject to all of the following:

15 1. For a project that will be awarded as either a low bid design-build contract
16 or a fixed price variable scope design-build contract, the technical review committee
17 shall determine whether technical proposals are responsive to the request for
18 proposals without ranking or scoring the proposals.

19 2. For a project that will be awarded as a best value design-build contract, the
20 technical review committee shall determine whether technical proposals are
21 responsive to the request for proposals and score each responsive technical proposal
22 as required by the request for proposals. The technical review committee may award
23 not more than 20 percent of the points awarded to a technical proposal based on the
24 design-builder's qualifications and ability to design, contract, and deliver the project
25 in accordance with any deadline established in the request for proposals. The

1 technical review committee may award a technical proposal not more than 55
2 percent of the maximum number of combined points that may be awarded to a
3 technical proposal and cost proposal.

4 (c) The office shall allow design-builders to include alternative technical
5 concepts and value engineering changes in their proposals by describing the process
6 for submission and evaluation of alternative technical concepts and value
7 engineering changes in the request for proposals.

8 (d) The technical review committee may not consider a proposal responsive
9 unless the proposal includes a conceptual design, critical path method, bar schedule
10 of the work to be performed or similar schematic, design plans and specifications,
11 technical reports, and all other information required by the request for proposals.
12 The technical review committee may not consider any price or fee included in the
13 technical proposal.

14 (e) The office shall notify the design-builder for each proposal that is
15 determined to be responsive under par. (b) that the design-builder may submit a cost
16 proposal under par. (7). The office shall reject all proposals that are determined to
17 be nonresponsive under par. (b).

18 **(7) COST PROPOSALS.** (a) Design-builders notified under sub. (6) (e) may submit
19 a cost proposal and the proposal shall include a fixed cost of design, engineering, and
20 construction services prepared by a design professional that contains all design,
21 engineering, construction, and quality assurance and quality control costs of the
22 project.

23 (b) The technical review committee may open cost proposals only after the
24 technical proposals have been reviewed as provided in sub. (6). At the time and place
25 specified in the request for proposals, the technical review committee shall open cost

1 proposals, read the proposals aloud, and, for a project that will be awarded as a best
2 value design-build contract, make public the committee's scoring of the technical
3 proposals.

4 (c) Following a review of cost proposals, the department may issue a notice of
5 intent to award a contract, subject to all of the following:

6 1. For a low bid design-build contract, the contract shall be awarded to the
7 qualified responsible bidder that submitted a responsive technical proposal and also
8 submitted the lowest responsive cost proposal.

9 2. For a fixed price variable scope design-build contract, the contract shall be
10 awarded to the qualified responsible bidder that submitted a responsive technical
11 proposal and that submitted a responsive cost proposal that provides the maximum
12 amount of services for the maximum fixed price set by the office or for an amount that
13 is less than the maximum fixed price.

14 3. For a best value design-build contract, the contract shall be awarded to the
15 qualified responsible bidder with the highest adjusted score, which shall be
16 calculated by adding the bidder's technical proposal score to the bidder's cost
17 proposal score. The technical review committee shall award the lowest qualified
18 responsible bidder the maximum number of points that may be awarded to a cost
19 proposal under the request for proposals, but not less than 45 percent and not more
20 than 75 percent of the maximum number of combined points that may be awarded
21 to a technical proposal and cost proposal. For each remaining qualified responsible
22 bidder, the technical review committee shall calculate the score for the cost proposal
23 by reducing the maximum number of points that may be awarded to the cost proposal
24 by at least 1 percent for each percentage point by which the cost proposal exceeds the
25 lowest cost proposal.

1 (d) Following a review of cost proposals, the office may reject all proposals. If
2 the office rejects all proposals or does not execute a contract after issuing an intent
3 to award a contract under par. (c), the office may reissue the request for proposals
4 and allow only the qualified responsible bidders originally notified under sub. (6) (e)
5 to submit new proposals. The office may pay a reasonable stipulated fee to each
6 design-builder that provides a responsive but unsuccessful proposal in response to
7 the reissued request for proposals. If the reissued request for proposals specifies a
8 maximum fixed price, the office may not award a stipend to a design-builder whose
9 proposal exceeds that price.

10 (e) Not less than 5 working days prior to executing a design-build contract, the
11 department shall provide notice to each unsuccessful qualified responsible bidder
12 that a notice of intent to award a contract has been issued.

13 (f) The department and the technical review committee shall maintain the
14 confidentiality of information provided by design-builders as required by s. 84.01
15 (32).

16 **(8) CONTRACT AWARD.** (a) In this subsection:

17 1. "Construction services" means work necessary to construct a project,
18 including trucking services and materials purchased regardless of whether the
19 materials are installed by the design-builder.

20 2. "Specialty services" means work related to sanitary sewer systems, water
21 main systems, staking, electrical, landscaping and erosion control, traffic control,
22 signing, pavement marking, fencing, and other work identified by the office.

23 (b) No later than 10 days following the issuance of a notice of intent to award
24 a design-build contract, the office shall verify that the design-builder will perform
25 not less than 30 percent of the construction services under the contract with labor

1 provided by employees of the design-builder or member and equipment owned or
2 rented by the design-builder or member.

3 (c) The design-builder shall submit to the office in the form prescribed by the
4 office documentation of the construction services the design-builder or members will
5 perform and the dollar value of the services.

6 (d) The office shall calculate the percentage of total construction services
7 identified in the contract to be performed by the design-builder or members by
8 subtracting the value of specialty services to be performed from the total contract
9 amount and dividing the dollar value of construction services to be performed by the
10 design-builder or members by the difference. If the value of construction services
11 to be performed by the design-builder or members is less than 30 percent of the value
12 of all construction services required under the contract, the office shall cancel the
13 contract award.

14 **(9) PROJECT DELIVERY.** An individual identified in a response to a request for
15 qualifications or in a technical proposal may be replaced by a design-builder if the
16 office determines that the new individual meets the qualifications described in the
17 response to the request for qualifications or in the technical proposal and that the
18 individual's qualifications are at least equal to the qualifications of the individual
19 being replaced.

20 **(10) LIABILITY.** (a) Nothing in this section shall be construed as relieving a
21 design-builder of 3rd-party liability or liability for loss or damage to property of the
22 state or a county or municipality.

23 (b) All design services, including architectural and engineering services,
24 provided under a design-build contract are services and not products.

1 **(11) STIPULATED FEE.** (a) The department shall award a stipulated fee of not
2 less than three-tenths of 1 percent of the department's estimated cost of design and
3 construction as follows:

4 1. To each qualified responsible bidder that provides a responsive but
5 unsuccessful proposal when the office issues a notice of intent to award a contract.
6 If the request for proposals specifies a maximum fixed price, the office may not award
7 a fee to a proposal that exceeds the maximum fixed price.

8 2. To all qualified responsible bidders that provide a responsive proposal, if the
9 office does not issue a notice of intent to award a contract.

10 3. To all qualified responsible bidders if the office cancels the solicitation before
11 the technical review committee reviews technical proposals.

12 (b) The department shall pay the fee to each qualified responsible bidder under
13 par. (a) no later than 90 days after the department issues a notice of intent to award
14 a contract, determines that it will not issue a notice of intent to award a contract, or
15 cancels the solicitation.

16 (c) In consideration for paying the fee, the department may use work product
17 contained in an unsuccessful proposal in connection with any proposed or awarded
18 design-build project without making any additional compensation to the
19 design-builder. If an unsuccessful design-builder waives the stipulated fee, the
20 department may not use work product in the design-builder's unsuccessful proposal.

21 **(12) RULES.** The department may promulgate rules necessary to implement
22 this section.

23 **(13) APPEALS.** (a) Any person aggrieved and directly affected by a decision of
24 the office to issue a request for qualifications or a request for proposals under this
25 section shall be entitled to judicial review of the decision as provided in chapter 227,

1 subject to the procedural requirements of s. 227.53 (1). A person shall be considered
2 a person aggrieved and directly affected by a decision of the office if any of the
3 following apply to a request for qualifications or a request for proposals issued by the
4 office under this section:

5 1. The request does not include qualifications, requirements, or other items
6 required under this section.

7 2. The request does not comply with procedural requirements under this
8 section.

9 3. The request contains material errors or omissions.

10 4. The request contains material discrepancies, deficiencies, or ambiguities
11 that prevent a person from submitting a responsive proposal.

12 5. The request indicates a bias against or preference for a specific
13 design-builder.

14 6. The request exceeds the department's authority.

15 (b) Any person aggrieved and directly affected by a decision of the office to issue
16 a notice of intent to award a contract under this section shall be entitled to judicial
17 review of the decision as provided in chapter 227, subject to the procedural
18 requirements of s. 227.53 (1). A person shall be considered a person aggrieved and
19 directly affected by a decision of the office if any of the following apply to a notice of
20 intent to award a contract under this section:

21 1. The design-builder that received the notice of intent to award a contract was
22 improperly certified as a qualified responsible bidder.

23 2. A mathematical error was made in scoring any of the proposals that resulted
24 in an improper intent to award a contract.

1 3. There is evidence of collusion or fraud involving either the design-builder
2 who received the notice of intent to award a contract or a member of the technical
3 review committee.

4 4. There is evidence of bias of a member of the technical review committee.

5 5. There is evidence that a member of the technical review committee has a
6 conflict of interest because the committee member, a member of his or her immediate
7 family, as defined in s. 19.42 (7), or any organization or business with which the
8 member is associated, as defined in s. 19.42 (2), may benefit from the intent to award
9 a contract.

10 6. The technical proposal or cost proposal submitted by the design-builder who
11 received the notice of intent to award a contract is not responsive to the request for
12 proposals, contains conditions or qualifications not provided for in the request for
13 proposals, or does not assign costs to all services identified in the technical proposal
14 or is otherwise materially unbalanced.

15 (c) If the office prevails upon judicial review, following any protest and
16 appellate court proceedings, the office shall be entitled to recover all costs and
17 charges included in the final order or judgment, excluding attorney's fees. Upon
18 payment of costs and charges by the protester, the bond shall be returned. If the
19 protesting party prevails, the protesting party shall be entitled to recover from the
20 office all costs and charges included in the final order or judgment, excluding
21 attorney's fees. The entire amount of the bond shall be forfeited if the hearing officer
22 determines that a protest was filed for a frivolous or improper purpose, including but
23 not limited to the purpose of harassing, causing unnecessary delay, or causing
24 needless cost for the office or parties.

1 **(14) DELIVERABLES.** (a) No later than 3 months after the effective date of this
2 section [LRB inserts date], the office shall prepare a report that establishes a
3 program structure for delivering projects as required under this subsection. The
4 report shall specify the types of highway improvement projects to be considered and
5 procedures and timelines for the bid process. The office may not designate a highway
6 improvement project as a design-build project prior to the completion of the report.

7 (b) No later than 6 months after the effective date of this section [LRB inserts
8 date], the office shall prepare a design-build procurement manual that incorporates
9 the requirements under this subsection and any applicable requirements under
10 federal law. The manual shall be created by a committee that includes all of the
11 following members:

12 1. The director.


13 2. Two employees of the department who represent the division of the
14 department responsible for transportation project development and who each have
15 not less than 5 years of experience in the transportation construction industry.

16 3. One person representing a state association of transportation architectural,
17 engineering, or design companies to be nominated by the governor and appointed
18 with the advice and consent of the senate.

19 4. One person representing a state association of transportation construction
20 companies to be nominated by the governor and appointed with the advice and
21 consent of the senate.


22 5. One person representing a national trade group with a design-build
23 certification program and experience in assisting states with the implementation of
24 a design-build program to be nominated by the governor and appointed with the
25 advice and consent of the senate.

1 (c) No later than December 31, 2026, the office shall submit a report the joint
 2 committee on finance and the senate and assembly standing committees having
 3 jurisdiction over transportation matters summarizing observations of the process
 4 utilized for alternative project delivery methods and describing the effectiveness of
 5 the alternative project delivery methods contracting procedures. The report shall
 6 include discussion on scope of work, history of projects selected, evaluation criteria,
 7 selection process, contract administration, work progression, time and cost
 8 comparisons between the traditional contracting method and alternative delivery
 9 methods, claims, and changes.

10 (d) No later than 6 months after receipt of the report required under par. (c),
 11 the joint committee on finance shall determine whether the alternative project
 12 delivery pilot program was successful in providing the department with additional
 13 tools that allow innovation, reduced project completion time, cost certainty, or
 14 reduced cost or other advantages or benefits and shall make a recommendation to
 15 the legislature as to whether the pilot program should be made permanent. 

SECTION 15.463-5

15

16  SECTION ~~3~~^{1089M.} 85.64 of the statutes is created to read:

17 **85.64 Office of innovative program delivery.** (1) In this section:

18 (a) "Director" means the director of the office of innovative program delivery
 19 attached to the department under s. 15.463 (1).

20 (b) "Office" means the office of innovative program delivery attached to the
 21 department under s. 15.463 (1).

22 (2) The secretary shall appoint a director who has no fewer than 5 years of
 23 experience in design-build project development and delivery specific to public
 24 transportation or public infrastructure construction.

25 (3) The director shall do all of the following:

- 1 (a) Perform the duties and functions required under s. 84.062.
- 2 (b) Employ, supervise, and train personnel assigned to the office by the
- 3 secretary.
- 4 (c) Supervise all expenditures of the office.
- 5 (4) The office shall perform the duties and functions required under s. 84.062. //

BC6W WS1-6

SECTION 4. Nonstatutory provisions.

6 (1) (4A) RELATING TO ALTERNATIVE PROJECT DELIVERY
 7 (1) EMERGENCY RULES. The department of transportation may use the procedure
 8 under s. 227.24 to promulgate emergency rules under s. 84.062 (5) to (7) for the period
 9 before the date on which permanent rules under s. 84.062 (5) to (7) take effect.
 10 Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this
 11 subsection remain in effect until the first day of the 25th month beginning after the
 12 effective date of the emergency rule, the date on which the permanent rules take
 13 effect, of the effective date of the repeal of the emergency rule, whichever is earlier.
 14 Notwithstanding s. 227.24 (1) (a) and (3), the department of transportation is not
 15 required to provide evidence that promulgating a rule under this subsection as
 16 emergency rules is necessary for the preservation of public peace, health, safety, or
 17 welfare and is not required to provide a finding of emergency for a rule promulgated
 18 under this subsection.

19 (2) EMPLOYEES OF THE OFFICE OF INNOVATIVE PROGRAM DELIVERY. The secretary of
 20 the department of transportation shall assign from the department's existing
 21 position authority at least 1.0 FTE position to the office of innovative program
 22 delivery attached to the department of transportation. //



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0315/P1
ZDW:amn&cdc

LFB:.....Wilson-Tepeli - Alternative highway project delivery methods and program

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 126, line 21: after that line insert:

3 **"SECTION 46m.** 15.463 of the statutes is created to read:

4 **15.463 Same; offices.** (1) OFFICE OF INNOVATIVE PROGRAM DELIVERY. There is
5 created an office of innovative program delivery in the department of transportation.

6 The director of the office shall be appointed by, and report directly to, the secretary
7 of transportation."

8 **2.** Page 673, line 4: after that line insert:

9 **"SECTION 1079m.** 84.062 of the statutes is created to read:

10 **84.062 Alternative project delivery.** (1) DEFINITIONS. In this section:

1 (a) "Alternative technical concepts" means a proposed alternative to the
2 technical requirements provided by the office in the request for proposals for a
3 project.

4 (b) "Best value design-build contract" means a design-build contract award
5 made following a calculation of value as provided in a request for proposals.

6 (c) "Design-build contract" means a contract for a project under which the
7 design, engineering, construction, and related services are provided by a single
8 design-builder.

9 (d) "Design-builder" means a private legal entity, consortium, or joint venture
10 that proposes to or executes a contract with the office to design, engineer, and
11 construct a project under this section.

12 (e) "Design-build project" means a project for which design, engineering,
13 construction, and related services are procured through a single contract with a
14 single private legal entity, consortium, or joint venture capable of providing the
15 necessary design, engineering, construction, and related services.

16 (f) "Design professional" means a person registered under s. 443.03 or 443.04
17 or a firm, partnership, or corporation registered under s. 443.08.

18 (g) "Director" means the director of the office of innovative program delivery
19 attached to the department under s. 15.463 (1).

20 (h) "Fixed price variable scope design-build contract" means a design-build
21 contract award made to the lowest qualified responsible bidder able to provide the
22 best qualitative scope of work at a price not to exceed a fixed price set by the office.

23 (i) "Low bid design-build contract" means a design-build contract award made
24 to the lowest qualified responsible bidder.

1 (j) "Member" means a private legal entity that is a member of a consortium or
2 joint venture that is a design-builder.

3 (k) "Office" means the office of innovative program delivery attached to the
4 department under s. 15.463 (1).

5 (L) "Project" means a project involving a highway improvement, as defined in
6 s. 84.06 (1) (am).

7 (m) "Qualified responsible bidder" means a design-builder responding to a
8 request for qualifications and that is certified by the technical review committee.

9 (n) "Responsive cost proposal" means a proposal that clearly identifies the costs
10 of all services to be performed by the qualified responsible bidder, including all
11 related fees, wages, and equipment and material costs.

12 (o) "Responsive technical proposal" means a proposal that clearly
13 demonstrates a qualified responsible bidder's understanding of the design,
14 engineering, and construction services to be performed and clearly describes the
15 bidder's approach to the project.

16 (p) "Technical review committee" means the committee appointed under sub.
17 (3).

18 (q) "Value engineering change" means a proposal that provides for a product
19 of equal or improved quality to the product required by the department and that will
20 reduce the project cost, improve safety, or decrease the time to complete the project.

21 **(2) DESIGN-BUILD PROJECTS.** (a) The department shall administer a pilot
22 program under which not more than 6 contracts are awarded for design-build
23 projects to be completed no later than December 31, 2025. The director may not
24 designate a project as a design-build project unless the department is able to clearly
25 define the scope of work.

1 (b) The department may not expend more than \$250,000,000 for 6 design-build
2 contracts designated as follows:

3 1. One low bid design-build contract for a project with an estimated value of
4 not less than \$5,000,000 and not more than \$25,000,000.

5 2. One best value design-build contract for a project with an estimated value
6 of not less than \$25,000,000 and not more than \$75,000,000.

7 3. One fixed price variable scope design-build contract with an estimated value
8 of not less than \$25,000,000 and not more than \$75,000,000.

9 4. Three contracts designated by the director with a total estimated value of not
10 more than \$125,000,000. The department may enter into a low bid design-build
11 contract, best value design-build contract or a fixed price variable scope
12 design-build contract under this subdivision.

13 (c) For each project designated as a design-build project under par. (a), the
14 office shall prepare a written analysis supporting the office's determination that it
15 is the best interests of the state to make the designation. The written determination
16 and supporting materials are subject to inspection under s. 19.35. The written
17 analysis shall include all of the following:

18 1. The extent to which the department can adequately define the project
19 requirements in a proposed scope of design and construction.

20 2. The impact on the projected project schedule and completion date.

21 3. The impact on the projected cost of the project.

22 4. The impact on the quality factors of the project.

23 5. The availability of contractors with experience with design-build projects or
24 other innovative project delivery methods.

1 6. The capability of the department to manage a design-build project with
2 office employees and design consultants.

3 7. The capability of the department to oversee a design-build project with a
4 contractor with experience with design-build projects or other innovative project
5 delivery methods.

6 8. The availability of current department employees qualified to perform
7 design and engineering services required for the design-build project.

8 9. The original character of the product or the services.

9 10. The statutory authority for the designation of the project as a design-build
10 project and how the project furthers the department's statutory duties.

11 11. Whether the design-build project must comply with any federal rule or
12 regulation or any U.S. department of transportation requirement and a statement
13 that the design-build project is in compliance.

14 12. Any other criteria the office determines is necessary.

15 (d) For each project designated under par. (a), the office shall solicit requests
16 for qualifications, requests for proposals, and cost proposals as provided in this
17 section and, subject to sub. (7) (c) and (d), let each project by contract to a qualified
18 responsible bidder.

19 (e) No more than 6 months following the completion of a design-build project
20 designated under this subsection, the office shall prepare a report, with input from
21 the design-builder and the technical review committee, detailing the project, the
22 decision to designate the project as a design-build project, the type of design-build
23 contract let, and recommendations for statutory changes, if any. The office shall
24 provide this report to the joint committee on finance and the senate and assembly
25 standing committees having jurisdiction over transportation matters. The senate

1 and assembly standing committees having jurisdiction over transportation matters
2 shall schedule a hearing on the report not more than 30 days following distribution
3 of the report by the chief clerks of the senate and the assembly. This paragraph does
4 not apply to projects completed after December 31, 2025.

5 (3) TECHNICAL REVIEW COMMITTEE. (a) The secretary shall appoint 5 individuals
6 to a technical review committee to evaluate proposals submitted under this section.
7 The committee shall consist of the following:

8 1. An employee of the department representing a regional office of the
9 department who has at least 5 years of experience in the transportation construction
10 industry.

11 2. Two employees of the department representing the division of the
12 department responsible for transportation project development, each of whom have
13 at least 5 years of experience in the transportation construction industry.

14 3. One person representing a state association of architectural, engineering, or
15 design companies.

16 4. One person representing a state association of transportation construction
17 companies.

18 (b) The secretary may not appoint to the technical review committee any person
19 associated, as defined in s. 19.42 (2), with a design-builder. No person appointed to
20 the technical review committee may review proposals under this section when the
21 proposed project could benefit the appointee or the appointee's immediate family, as
22 defined in s. 19.42 (7).

23 (c) A person appointed to the technical review committee is an agent of the
24 department under s. 895.46.

1 (d) Except as otherwise provided in this section, all records of the technical
2 review committee are open to public inspection and copying under s. 19.35 (1).

3 (4) BIDS. The office shall solicit design-build proposals in 2 phases. In the first
4 phase, the office shall solicit requests for qualifications under sub. (5) and requests
5 for proposals under sub. (6). The technical review committee shall certify responsible
6 bidders as provided in sub. (5) (c) and shall score technical proposals as provided in
7 sub. (6) (b). In the 2nd phase, the office shall solicit cost proposals and the technical
8 review committee shall evaluate cost proposals as provided in sub. (7).

9 (5) REQUEST FOR QUALIFICATIONS. (a) The office shall prepare a request for
10 qualifications that includes all of the following:

11 1. Minimum required qualifications for certification as a qualified bidder,
12 which shall include all of the following:

13 a. The design and construction experience of the design-builder or member,
14 personnel, and contractors who will manage the design, engineering, and
15 construction aspects of the project. The office may not require a level of experience
16 that will unreasonably restrict competition.

17 b. A requirement that the design-builder or member employ an individual who
18 has no fewer than 5 years of experience in highway construction specific to highway
19 improvement projects in this state.

20 c. A requirement that the design-builder or member be a design professional
21 or will employ or contract with a design professional.

22 d. A sworn statement of the design-builder's financial ability, equipment, and
23 experience in design-build project delivery and any other information the office
24 determines is necessary to determine a bidder's competency.

1 2. Minimum required qualifications for certification as a responsible bidder,
2 which shall include all of the following:

3 a. The design-builder is registered or authorized to do business in this state.

4 b. The design-builder submits a sworn statement that indicates that it has
5 adequate financial resources to complete the work described in the request for
6 qualifications, taking into account any other work the design-builder is currently
7 under contract to complete.

8 c. The design-builder is bondable for the term of the proposed contract and is
9 able to obtain a 100 percent performance bond and a separate 100 percent payment
10 bond.

11 d. If the department has previously contracted with the design-builder or a
12 member, the design-builder or member has a record of satisfactorily completing
13 projects. In making this determination, the technical review committee shall
14 consider if the design-builder or the member has completed all contracts in
15 accordance with drawings and specifications, diligently pursued execution of the
16 work and completed contracts according to the time schedule, fulfilled guarantee
17 requirements of contracts, and complied with applicable safety program
18 requirements. The technical review committee may not consider whether a
19 design-builder or member exercised legal rights specified in statute or rule or under
20 a contract with the department.

21 e. The design-builder or a member is not on a list maintained by the
22 department identifying persons ineligible to bid due to suspension or debarment or
23 on a list that the department of administration maintains for persons who violated
24 statutory provisions or administrative rules relating to construction.

25 f. The design-builder or a member has been in business for at least 12 months.

1 g. The design-builder or a member has served as a prime contractor on no fewer
2 than 5 projects administered by the department during the previous 5 calendar
3 years.

4 h. The design-builder can provide information to the technical review
5 committee upon request about ownership, management, and control of the
6 design-builder.

7 i. The design-builder or a member has not been debarred from any government
8 contracts and has not been found to have committed tax avoidance or evasion in any
9 jurisdiction in the previous 10 years.

10 j. The design-builder has not been disciplined under a professional license in
11 any jurisdiction in the previous 10 years.

12 k. No design professional employed by the design-builder or a member or that
13 the design-builder will contract with has been disciplined in any jurisdiction under
14 a license that is currently in use.

15 3. Information about bid procedures and the proposed project, including all of
16 the following:

17 a. The type of contract to be awarded.

18 b. The selection criteria for recommendation of design-builders for phase 2.

19 c. Project requirements, including a scope of work statement and a schedule.

20 d. The required completion date of the project.

21 e. A description of requirements for the technical proposal for the project.

22 (b) The office shall advertise the request for qualifications by publication of a
23 class 1 notice, as defined in s. 985.07 (1), in the official state newspaper and on the
24 department's Internet site. The office may place similar notices in publications likely
25 to inform potential bidders of the project. The office shall issue a request for

1 qualifications or provide information as to where the request for qualifications may
2 be obtained to any person, without regard to the qualifications of the person. The
3 office shall include in all advertisements under this paragraph the location and scope
4 of work, the amount of bid guarantee required, the date, time, and place of bid or
5 proposal opening, and the date when and place where plans will be available.

6 (c) The technical review committee shall certify at least 2 but not more than 4
7 design-builders as qualified responsible bidders. If the office does not receive at
8 least 2 responses to the request for qualifications or if the technical review committee
9 certifies only one design-builder as a qualified responsible bidder, the office may
10 re-advertise or cancel the project.

11 **(6) REQUEST FOR PROPOSALS.** (a) The office shall prepare a request for proposals
12 for each design-build contract that includes all the following:

13 1. The name, title, address, and telephone numbers of persons to whom
14 questions concerning the proposal should be directed.

15 2. The procedures to be followed for submitting proposals, including how
16 proposals must be delivered, the date and time by which they must be received, and
17 the name and address of the person who is to receive them.

18 3. The date and time of the pre-proposal conference, if any.

19 4. A requirement that a technical proposal and a cost proposal be submitted in
20 separate sealed proposals at the same time.

21 5. A clear description of the scope of all design, engineering, and construction
22 work.

23 6. The criteria for evaluating proposals and their relative weight, if applicable.

1 7. The design criteria package, including a description of drawings,
2 specifications, or other information to be submitted with the proposals, which shall
3 allow the design-builder to use innovative projects meeting the criteria.

4 8. The project schedule and budget limits, if any.

5 9. The proposed terms and conditions of the contract.

6 10. Requirements relating to performance bonds, payments bonds, and
7 insurance.

8 11. Amount of stipend, if any.

9 12. The procedures for awarding a contract.

10 13. A process for the technical review committee to review and accept
11 alternative technical concepts and value engineering change proposals.

12 14. A requirement that the design-builder perform not less than 30 percent of
13 the construction services under the contract with labor provided by employees of the
14 design-builder or member and equipment owned or rented by the design-builder or
15 member.

16 15. Any other information the office determines is necessary.

17 (b) The technical review committee shall evaluate each technical proposal,
18 which may include a confidential interview, and shall assign points in accordance
19 with the request for proposals and subject to all of the following:

20 1. For a project that will be awarded as either a low bid design-build contract
21 or a fixed price variable scope design-build contract, the technical review committee
22 shall determine whether technical proposals are responsive to the request for
23 proposals without ranking or scoring the proposals.

24 2. For a project that will be awarded as a best value design-build contract, the
25 technical review committee shall determine whether technical proposals are

1 responsive to the request for proposals and score each responsive technical proposal
2 as required by the request for proposals. The technical review committee may award
3 not more than 20 percent of the points awarded to a technical proposal based on the
4 design-builder's qualifications and ability to design, contract, and deliver the project
5 in accordance with any deadline established in the request for proposals. The
6 technical review committee may award a technical proposal not more than 55
7 percent of the maximum number of combined points that may be awarded to a
8 technical proposal and cost proposal.

9 (c) The office shall allow design-builders to include alternative technical
10 concepts and value engineering changes in their proposals by describing the process
11 for submission and evaluation of alternative technical concepts and value
12 engineering changes in the request for proposals.

13 (d) The technical review committee may not consider a proposal responsive
14 unless the proposal includes a conceptual design, critical path method, bar schedule
15 of the work to be performed or similar schematic, design plans and specifications,
16 technical reports, and all other information required by the request for proposals.
17 The technical review committee may not consider any price or fee included in the
18 technical proposal.

19 (e) The office shall notify the design-builder for each proposal that is
20 determined to be responsive under par. (b) that the design-builder may submit a cost
21 proposal under par. (7). The office shall reject all proposals that are determined to
22 be nonresponsive under par. (b).

23 **(7) COST PROPOSALS.** (a) Design-builders notified under sub. (6) (e) may submit
24 a cost proposal and the proposal shall include a fixed cost of design, engineering, and
25 construction services prepared by a design professional that contains all design,

1 engineering, construction, and quality assurance and quality control costs of the
2 project.

3 (b) The technical review committee may open cost proposals only after the
4 technical proposals have been reviewed as provided in sub. (6). At the time and place
5 specified in the request for proposals, the technical review committee shall open cost
6 proposals, read the proposals aloud, and, for a project that will be awarded as a best
7 value design-build contract, make public the committee's scoring of the technical
8 proposals.

9 (c) Following a review of cost proposals, the department may issue a notice of
10 intent to award a contract, subject to all of the following:

11 1. For a low bid design-build contract, the contract shall be awarded to the
12 qualified responsible bidder that submitted a responsive technical proposal and also
13 submitted the lowest responsive cost proposal.

14 2. For a fixed price variable scope design-build contract, the contract shall be
15 awarded to the qualified responsible bidder that submitted a responsive technical
16 proposal and that submitted a responsive cost proposal that provides the maximum
17 amount of services for the maximum fixed price set by the office or for an amount that
18 is less than the maximum fixed price.

19 3. For a best value design-build contract, the contract shall be awarded to the
20 qualified responsible bidder with the highest adjusted score, which shall be
21 calculated by adding the bidder's technical proposal score to the bidder's cost
22 proposal score. The technical review committee shall award the lowest qualified
23 responsible bidder the maximum number of points that may be awarded to a cost
24 proposal under the request for proposals, but not less than 45 percent and not more
25 than 75 percent of the maximum number of combined points that may be awarded

1 to a technical proposal and cost proposal. For each remaining qualified responsible
2 bidder, the technical review committee shall calculate the score for the cost proposal
3 by reducing the maximum number of points that may be awarded to the cost proposal
4 by at least 1 percent for each percentage point by which the cost proposal exceeds the
5 lowest cost proposal.

6 (d) Following a review of cost proposals, the office may reject all proposals. If
7 the office rejects all proposals or does not execute a contract after issuing an intent
8 to award a contract under par. (c), the office may reissue the request for proposals
9 and allow only the qualified responsible bidders originally notified under sub. (6) (e)
10 to submit new proposals. The office may pay a reasonable stipulated fee to each
11 design-builder that provides a responsive but unsuccessful proposal in response to
12 the reissued request for proposals. If the reissued request for proposals specifies a
13 maximum fixed price, the office may not award a stipend to a design-builder whose
14 proposal exceeds that price.

15 (e) Not less than 5 working days prior to executing a design-build contract, the
16 department shall provide notice to each unsuccessful qualified responsible bidder
17 that a notice of intent to award a contract has been issued.

18 (f) The department and the technical review committee shall maintain the
19 confidentiality of information provided by design-builders as required by s. 84.01
20 (32).

21 **(8) CONTRACT AWARD.** (a) In this subsection:

22 1. "Construction services" means work necessary to construct a project,
23 including trucking services and materials purchased regardless of whether the
24 materials are installed by the design-builder.

1 2. “Specialty services” means work related to sanitary sewer systems, water
2 main systems, staking, electrical, landscaping and erosion control, traffic control,
3 signing, pavement marking, fencing, and other work identified by the office.

4 (b) No later than 10 days following the issuance of a notice of intent to award
5 a design-build contract, the office shall verify that the design-builder will perform
6 not less than 30 percent of the construction services under the contract with labor
7 provided by employees of the design-builder or member and equipment owned or
8 rented by the design-builder or member.

9 (c) The design-builder shall submit to the office in the form prescribed by the
10 office documentation of the construction services the design-builder or members will
11 perform and the dollar value of the services.

12 (d) The office shall calculate the percentage of total construction services
13 identified in the contract to be performed by the design-builder or members by
14 subtracting the value of specialty services to be performed from the total contract
15 amount and dividing the dollar value of construction services to be performed by the
16 design-builder or members by the difference. If the value of construction services
17 to be performed by the design-builder or members is less than 30 percent of the value
18 of all construction services required under the contract, the office shall cancel the
19 contract award.

20 **(9) PROJECT DELIVERY.** An individual identified in a response to a request for
21 qualifications or in a technical proposal may be replaced by a design-builder if the
22 office determines that the new individual meets the qualifications described in the
23 response to the request for qualifications or in the technical proposal and that the
24 individual’s qualifications are at least equal to the qualifications of the individual
25 being replaced.

1 **(10) LIABILITY.** (a) Nothing in this section shall be construed as relieving a
2 design-builder of 3rd-party liability or liability for loss or damage to property of the
3 state or a county or municipality.

4 (b) All design services, including architectural and engineering services,
5 provided under a design-build contract are services and not products.

6 **(11) STIPULATED FEE.** (a) The department shall award a stipulated fee of not
7 less than three-tenths of 1 percent of the department's estimated cost of design and
8 construction as follows:

9 1. To each qualified responsible bidder that provides a responsive but
10 unsuccessful proposal when the office issues a notice of intent to award a contract.
11 If the request for proposals specifies a maximum fixed price, the office may not award
12 a fee to a proposal that exceeds the maximum fixed price.

13 2. To all qualified responsible bidders that provide a responsive proposal, if the
14 office does not issue a notice of intent to award a contract.

15 3. To all qualified responsible bidders if the office cancels the solicitation before
16 the technical review committee reviews technical proposals.

17 (b) The department shall pay the fee to each qualified responsible bidder under
18 par. (a) no later than 90 days after the department issues a notice of intent to award
19 a contract, determines that it will not issue a notice of intent to award a contract, or
20 cancels the solicitation.

21 (c) In consideration for paying the fee, the department may use work product
22 contained in an unsuccessful proposal in connection with any proposed or awarded
23 design-build project without making any additional compensation to the
24 design-builder. If an unsuccessful design-builder waives the stipulated fee, the
25 department may not use work product in the design-builder's unsuccessful proposal.

1 **(12) RULES.** The department may promulgate rules necessary to implement
2 this section.

3 **(13) APPEALS.** (a) Any person aggrieved and directly affected by a decision of
4 the office to issue a request for qualifications or a request for proposals under this
5 section shall be entitled to judicial review of the decision as provided in chapter 227,
6 subject to the procedural requirements of s. 227.53 (1). A person shall be considered
7 a person aggrieved and directly affected by a decision of the office if any of the
8 following apply to a request for qualifications or a request for proposals issued by the
9 office under this section:

10 1. The request does not include qualifications, requirements, or other items
11 required under this section.

12 2. The request does not comply with procedural requirements under this
13 section.

14 3. The request contains material errors or omissions.

15 4. The request contains material discrepancies, deficiencies, or ambiguities
16 that prevent a person from submitting a responsive proposal.

17 5. The request indicates a bias against or preference for a specific
18 design-builder.

19 6. The request exceeds the department's authority.

20 (b) Any person aggrieved and directly affected by a decision of the office to issue
21 a notice of intent to award a contract under this section shall be entitled to judicial
22 review of the decision as provided in chapter 227, subject to the procedural
23 requirements of s. 227.53 (1). A person shall be considered a person aggrieved and
24 directly affected by a decision of the office if any of the following apply to a notice of
25 intent to award a contract under this section:

1 1. The design-builder that received the notice of intent to award a contract was
2 improperly certified as a qualified responsible bidder.

3 2. A mathematical error was made in scoring any of the proposals that resulted
4 in an improper intent to award a contract.

5 3. There is evidence of collusion or fraud involving either the design-builder
6 who received the notice of intent to award a contract or a member of the technical
7 review committee.

8 4. There is evidence of bias of a member of the technical review committee.

9 5. There is evidence that a member of the technical review committee has a
10 conflict of interest because the committee member, a member of his or her immediate
11 family, as defined in s. 19.42 (7), or any organization or business with which the
12 member is associated, as defined in s. 19.42 (2), may benefit from the intent to award
13 a contract.

14 6. The technical proposal or cost proposal submitted by the design-builder who
15 received the notice of intent to award a contract is not responsive to the request for
16 proposals, contains conditions or qualifications not provided for in the request for
17 proposals, or does not assign costs to all services identified in the technical proposal
18 or is otherwise materially unbalanced.

19 (c) If the office prevails upon judicial review, following any protest and
20 appellate court proceedings, the office shall be entitled to recover all costs and
21 charges included in the final order or judgment, excluding attorney's fees. Upon
22 payment of costs and charges by the protester, the bond shall be returned. If the
23 protesting party prevails, the protesting party shall be entitled to recover from the
24 office all costs and charges included in the final order or judgment, excluding
25 attorney's fees. The entire amount of the bond shall be forfeited if the hearing officer

1 determines that a protest was filed for a frivolous or improper purpose, including but
2 not limited to the purpose of harassing, causing unnecessary delay, or causing
3 needless cost for the office or parties.

4 (14) DELIVERABLES. (a) No later than 3 months after the effective date of this
5 section [LRB inserts date], the office shall prepare a report that establishes a
6 program structure for delivering projects as required under this subsection. The
7 report shall specify the types of highway improvement projects to be considered and
8 procedures and timelines for the bid process. The office may not designate a highway
9 improvement project as a design-build project prior to the completion of the report.

10 (b) No later than 6 months after the effective date of this section [LRB inserts
11 date], the office shall prepare a design-build procurement manual that incorporates
12 the requirements under this subsection and any applicable requirements under
13 federal law. The manual shall be created by a committee that includes all of the
14 following members:

15 1. The director.

16 2. Two employees of the department who represent the division of the
17 department responsible for transportation project development and who each have
18 not less than 5 years of experience in the transportation construction industry.

19 3. One person representing a state association of transportation architectural,
20 engineering, or design companies to be nominated by the governor and appointed
21 with the advice and consent of the senate.

22 4. One person representing a state association of transportation construction
23 companies to be nominated by the governor and appointed with the advice and
24 consent of the senate.

1 5. One person representing a national trade group with a design-build
2 certification program and experience in assisting states with the implementation of
3 a design-build program to be nominated by the governor and appointed with the
4 advice and consent of the senate.

5 (c) No later than December 31, 2026, the office shall submit a report the joint
6 committee on finance and the senate and assembly standing committees having
7 jurisdiction over transportation matters summarizing observations of the process
8 utilized for alternative project delivery methods and describing the effectiveness of
9 the alternative project delivery methods contracting procedures. The report shall
10 include discussion on scope of work, history of projects selected, evaluation criteria,
11 selection process, contract administration, work progression, time and cost
12 comparisons between the traditional contracting method and alternative delivery
13 methods, claims, and changes.

14 (d) No later than 6 months after receipt of the report required under par. (c),
15 the joint committee on finance shall determine whether the alternative project
16 delivery pilot program was successful in providing the department with additional
17 tools that allow innovation, reduced project completion time, cost certainty, or
18 reduced cost or other advantages or benefits and shall make a recommendation to
19 the legislature as to whether the pilot program should be made permanent.”.

20 **3.** Page 677, line 17: after that line insert:

21 “**SECTION 1089m.** 85.64 of the statutes is created to read:

22 **85.64 Office of innovative program delivery.** (1) In this section:

23 (a) “Director” means the director of the office of innovative program delivery
24 attached to the department under s. 15.463 (1).

1 (b) "Office" means the office of innovative program delivery attached to the
2 department under s. 15.463 (1).

3 (2) The secretary shall appoint a director who has no fewer than 5 years of
4 experience in design-build project development and delivery specific to public
5 transportation or public infrastructure construction.

6 (3) The director shall do all of the following:

7 (a) Perform the duties and functions required under s. 84.062.

8 (b) Employ, supervise, and train personnel assigned to the office by the
9 secretary.

10 (c) Supervise all expenditures of the office.

11 (4) The office shall perform the duties and functions required under s. 84.062.".

12 **4.** Page 1121, line 4: after that line insert:

13 "(4p) EMERGENCY RULES RELATING TO ALTERNATIVE PROJECT DELIVERY. The
14 department of transportation may use the procedure under s. 227.24 to promulgate
15 emergency rules under s. 84.062 (5) to (7) for the period before the date on which
16 permanent rules under s. 84.062 (5) to (7) take effect. Notwithstanding s. 227.24 (1)
17 (c) and (2), emergency rules promulgated under this subsection remain in effect until
18 the first day of the 25th month beginning after the effective date of the emergency
19 rule, the date on which the permanent rules take effect, of the effective date of the
20 repeal of the emergency rule, whichever is earlier. Notwithstanding s. 227.24 (1) (a)
21 and (3), the department of transportation is not required to provide evidence that
22 promulgating a rule under this subsection as emergency rules is necessary for the
23 preservation of public peace, health, safety, or welfare and is not required to provide
24 a finding of emergency for a rule promulgated under this subsection.

