



2019 ASSEMBLY BILL 286

June 7, 2019 - Introduced by Representatives SANFELIPPO, FELZKOWSKI, BRANDTJEN, DITTRICH, GUNDRUM, HUTTON, KNODL, KUGLITSCH, MAGNAFICI, NEYLON, OTT, QUINN, RAMTHUN, SORTWELL, TAUCHEN, WICHGERS and ALLEN, cosponsored by Senators KAPENGA, CRAIG, FEYEN, KOOYENGA, MARKLEIN, NASS, TIFFANY, WANGGAARD, STROEBEL, BERNIER and LEMAHIEU. Referred to Committee on Transportation.

- 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 \$10,000,000 to \$50,000,000.

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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 \$50,000,000 to \$150,000,000.

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 \$50,000,000 to \$150,000,000.

4. Three contracts, to be determined by DOT, with a total estimated value of not more than \$200,000,000.

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:

1 **SECTION 1.** 15.463 of the statutes is created to read:

2 **15.463 Same; offices. (1) OFFICE OF INNOVATIVE PROGRAM DELIVERY.** There is
3 created an office of innovative program delivery in the department of transportation.
4 The director of the office shall be appointed by, and report directly to, the secretary
5 of transportation.

6 **SECTION 2.** 84.062 of the statutes is created to read:

7 **84.062 Alternative project delivery. (1) DEFINITIONS.** In this section:

8 (a) "Alternative technical concepts" means a proposed alternative to the
9 technical requirements provided by the office in the request for proposals for a
10 project.

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

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

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

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

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

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

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

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

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

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

24 (L) “Project” means a project involving a highway improvement, as defined in
25 s. 84.06 (1) (am).

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1 (m) “Qualified responsible bidder” means a design-builder responding to a
2 request for qualifications and that is certified by the technical review committee.

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

6 (o) “Responsive technical proposal” means a proposal that clearly
7 demonstrates a qualified responsible bidder’s understanding of the design,
8 engineering, and construction services to be performed and clearly describes the
9 bidder’s approach to the project.

10 (p) “Technical review committee” means the committee appointed under sub.
11 (3).

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

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

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

22 1. One low bid design-build contract for a project with an estimated value of
23 not less than \$10,000,000 and not more than \$50,000,000.

24 2. One best value design-build contract for a project with an estimated value
25 of not less than \$50,000,000 and not more than \$150,000,000.

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1 3. One fixed price variable scope design-build contract with an estimated value
2 of not less than \$50,000,000 and not more than \$150,000,000.

3 4. Three contracts designated by the director with a total estimated value of not
4 more than \$200,000,000. The department may enter into a low bid design-build
5 contract, best value design-build contract or a fixed price variable scope
6 design-build contract under this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 3. One person representing a state association of architectural, engineering, or
8 design companies.

9 4. One person representing a state association of transportation construction
10 companies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 h. The design-builder can provide information to the technical review
23 committee upon request about ownership, management, and control of the
24 design-builder.

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

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

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

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

11 a. The type of contract to be awarded.

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

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

14 d. The required completion date of the project.

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

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

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

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

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

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

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

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

16 5. A clear description of the scope of all design, engineering, and construction
17 work.

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

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

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

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

24 10. Requirements relating to performance bonds, payments bonds, and
25 insurance.

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1 11. Amount of stipend, if any.

2 12. The procedures for awarding a contract.

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

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

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

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

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

17 2. For a project that will be awarded as a best value design-build contract, the
18 technical review committee shall determine whether technical proposals are
19 responsive to the request for proposals and score each responsive technical proposal
20 as required by the request for proposals. The technical review committee may award
21 not more than 20 percent of the points awarded to a technical proposal based on the
22 design-builder's qualifications and ability to design, contract, and deliver the project
23 in accordance with any deadline established in the request for proposals. The
24 technical review committee may award a technical proposal not more than 50

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1 percent of the maximum number of combined points that may be awarded to a
2 technical proposal and cost proposal.

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

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

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

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

22 (b) The technical review committee may open cost proposals only after the
23 technical proposals have been reviewed as provided in sub. (6). At the time and place
24 specified in the request for proposals, the technical review committee shall open cost
25 proposals, read the proposals aloud, and, for a project that will be awarded as a best

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1 value design-build contract, make public the committee's scoring of the technical
2 proposals.

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

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

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

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

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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 all services necessary to construct a project,
18 including trucking expenses and the expense of materials 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, and fencing.

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

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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 determine the percentage of total construction services,
7 excluding specialty services, identified in the contract to be performed by the
8 design-builder or members. If the office determines that the construction services
9 to be performed by the design-builder or members are less than 30 percent of
10 construction services required under the contract, the office shall cancel the contract
11 award.

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

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

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

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

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

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

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

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

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

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

20 **(13) APPEALS.** (a) Any person aggrieved and directly affected by a decision of
21 the office to issue a request for qualifications or a request for proposals under this
22 section shall be entitled to judicial review of the decision as provided in chapter 227,
23 subject to the procedural requirements of s. 227.53 (1). A person shall be considered
24 a person aggrieved and directly affected by a decision of the office if any of the

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1 following apply to a request for qualifications or a request for proposals issued by the
2 office under this section:

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

5 2. The request does not comply with procedural requirements under this
6 section.

7 3. The request contains material errors or omissions.

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

10 5. The request indicates a bias against or preference for a specific
11 design-builder.

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

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

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

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

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

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

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

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

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

22 **(14) DELIVERABLES.** (a) No later than 3 months after the effective date of this
23 act [LRB inserts date], the office shall prepare a report that establishes a program
24 structure for delivering projects as required under this subsection. The report shall
25 specify the types of highway improvement projects to be considered and procedures

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1 and timelines for the bid process. The office may not designate a highway
2 improvement project as a design-build project prior to the completion of the report.

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

8 1. The director.

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

12 3. One person representing a state association of transportation architectural,
13 engineering, or design companies selected from a list of 3 individuals created by the
14 majority leader of the senate.

15 4. One person representing a state association of transportation construction
16 companies selected from a list of 3 individuals created by the speaker of the assembly.

17 5. One person representing a national trade group with a design-build
18 certification program and experience in assisting states with the implementation of
19 a design-build program.

20 (c) No later than December 31, 2026, the office shall submit a report the joint
21 committee on finance and the senate and assembly standing committees having
22 jurisdiction over transportation matters summarizing observations of the process
23 utilized for alternative project delivery methods and describing the effectiveness of
24 the alternative project delivery methods contracting procedures. The report shall
25 include discussion on scope of work, history of projects selected, evaluation criteria,

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1 selection process, contract administration, work progression, time and cost
2 comparisons between the traditional contracting method and alternative delivery
3 methods, claims, and changes.

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

10 **SECTION 3.** 85.64 of the statutes is created to read:

11 **85.64 Office of innovative program delivery. (1)** In this section:

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

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

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

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

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

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

23 (c) Supervise all expenditures of the office.

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

25 **SECTION 4. Nonstatutory provisions.**

