

HOUSE BILL 318

SECTION 8. (A) During fiscal year 2010, the Chancellor of the Ohio Board of Regents, in consultation with representatives of state institutions of higher education and with Controlling Board approval, shall designate one construction project at each of three different state institutions of higher education as a Construction Reform Demonstration Project that may utilize alternative methods of construction delivery in accordance with this section. In selecting projects to be so designated, the Chancellor shall consider the following:

- (1) The geographic distribution of the projects throughout the state;
- (2) The extent to which the projects, when considered together, represent different types of public construction projects, such as new construction, building renovation, and infrastructure replacement; will have different uses; are of different sizes; and will utilize different methods of construction delivery.

(B) To be eligible for designation as a Construction Reform Demonstration Project by the Chancellor, the state institution of higher education proposing the project shall demonstrate all of the following to the Chancellor:

- (1) The project is amenable to the use of, and would make use of, any of the alternative methods of construction delivery described in division (C) of this section.
- (2) The state institution of higher education has a comprehensive, credible funding plan that does not rely on any subsequent state capital money.
- (3) The state institution of higher education has satisfied all internal requirements of the state institution of higher education that are necessary to allow bidding on the project to begin before the end of fiscal year 2010.
- (4) The state institution of higher education has a reasonable plan for meeting or exceeding the EDGE Contracting Goal for the project, as determined in accordance with division (D)(1) of this section, through the expected provision of contracts to qualified EDGE business enterprises.
- (5) The project will qualify for LEED certification.

(C)(1) Subject to division (C)(2) of this section, each state institution of higher education undertaking a Construction Reform Demonstration Project designated by the Chancellor under division (A) of this section shall, notwithstanding any law to the contrary, utilize one or more of the following alternative methods of construction delivery to develop the project:

(a) Construction manager at risk. For purposes of this section, "construction manager at risk" means a person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement and who provides the state institution of higher education a guaranteed maximum price utilizing an open book pricing method, wherein the construction manager at risk provides the state institution of higher education all books, records, documents, and other data in its possession related to itself, its subcontractors, and material suppliers pertaining to the bidding, pricing, or performance of a construction management contract. The construction manager at risk shall be selected using a

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qualifications based selection process, including best value criteria. "Best value criteria" includes technical design, technical approach, quality of proposed personnel, management plan, or other factors that are determined to derive or offer the greatest value to the state institution of higher education.

(b) Design build. For purposes of this section, "design build" means services that form an integrated delivery system for which a person is responsible to a state institution of higher education for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement. The design-builder shall be selected using a qualifications based selection process, including best value criteria, and using a bridging design delivery in which the state institution of higher education utilizes a criteria or concept architect to develop the program of requirements and the preliminary project scope, and to validate that the state institution of higher education's design intent is implemented.

(c) General Contracting. For purposes of this section, "general contracting" means contracting that is exempt from the requirement of Chapter 153. of the Revised Code to award multiple prime contracts for a project up to \$600,000 in total project value.

(d) Design Assist. For purposes of this section, "design assist" means the procurement method by which, prior to completion of design, a construction contract may be awarded on a best value basis pursuant to which a contractor provides design assistance to the architect or engineer of record through a design professional separately retained by the contractor. A design assist method also may be used in conjunction with any of the other construction delivery methods set forth in division (C) of this section.

(2) In developing their Construction Demonstration Reform Projects, the state institutions of higher education are not exempt from the applicable provisions of law concerning any of the following:

- (a) Prevailing wage;
- (b) Bonding;
- (c) EDGE;
- (d) Retainage;
- (e) Prompt pay;
- (f) Equal employment opportunity and affirmative action construction compliance;
- (g) Domestic steel;
- (h) Public notice and advertising.

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(D)(1) Each state institution of higher education undertaking a Construction Reform Demonstration Project designated by the Chancellor shall use best efforts to seek to maximize EDGE business enterprise contracting on the project, based upon percentage goals determined as follows:

(a) For each project, the Equal Opportunity Division of the Department of Administrative Services shall determine the Demonstration EDGE Percentage by taking into consideration the percentage goal stated in the Technical Assistance Guide for Federal Construction Contracts for the county in which the project will be located and any other factors deemed relevant by the Division.

(b) For each project, the Division shall apply the Demonstration EDGE Percentage to the total project cost to establish the project's EDGE Contracting Goal.

(2) All business enterprises certified as minority business enterprises under the laws of this state as of the effective date of this section shall, for purposes of contracting on any of the Construction Reform Demonstration Projects, be considered EDGE business enterprises.

(3) The Division shall assist state institutions of higher education in maximizing the utilization of EDGE contractors on Construction Reform Demonstration projects, as follows:

(a) At each of the following EDGE compliance check points, the Division shall certify that the project is in reasonable attainment of the EDGE contracting goal for the project:

(i) Prior to each contract being awarded, based on the submission of a reasonable, credible plan for meeting the goal;

(ii) Once monthly for each contract awarded for work on the project.

(b) In determining whether certification under division (D)(3)(a) of this section is warranted, the Division may undertake onsite inspections and may review any contractor records related to the project that it deems necessary.

(c) No payment to a contractor shall be made in the absence of a certification required by division (D)(3)(a) of this section.

(d) The Division shall establish a stakeholder advisory panel, which shall include two representatives of the Ohio Legislative Black Caucus, two minority contractors, and the Chancellor, to consult with and advise the Division regarding its preparation of regular reports to the Governor, the House of Representatives, and the Senate regarding the satisfaction of EDGE contracting goals on the Construction Reform Demonstration Projects. The panel shall also advise the Division on strategies for maximizing participation of EDGE contractors and ways that the Division could provide problem-solving assistance to the state institutions of higher education undertaking a Construction Reform Demonstration Project and the contractors on the projects to advance the achievement of EDGE contracting goals on those projects.

(4) The state institutions of higher education undertaking a Construction Reform Demonstration Project shall pay to the Department of Administrative Services, for staff and other expenses associated with the Division's responsibilities under division (D) of this section, an aggregate amount equal to \$150,000 per year in each year in which any of the projects remains

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uncompleted. The portion of the \$150,000 to be paid by any one of the state institutions of higher education with projects underway during that year shall be based on the expenditures of each project in that year compared with the other projects, all as determined by the Division.

(E) The state institutions of higher education that are undertaking a Construction Reform Demonstration Project shall cooperate with and provide the Chancellor with all requested information in order to facilitate the Chancellor's study of the cost effectiveness and efficiencies associated with the use of the alternative construction delivery methods.

The Chancellor shall prepare semi-annual reports of the Chancellor's findings and a final report. A copy of each report shall be submitted to the Governor, the House of Representatives, and the Senate.

The state institutions of higher education may, at their discretion and in consultation with the Chancellor, transfer funds to the Board of Regents to assist in covering the costs associated with the Chancellor's study and the preparation of the reports.

(F) This section shall expire on the date that all of the Construction Reform Demonstration Projects have been completed or on January 1, 2014, whichever is later.