

FIRST REGULAR SESSION

HOUSE BILL NO. 1082

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REMOLE.

2143H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.5060 and 67.5070, RSMo, and to enact in lieu thereof one new section relating to design-build contracts for wastewater projects.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 67.5060 and 67.5070, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 67.5060, to read as follows:

67.5060. 1. As used in this section, the following terms mean:

(1) "Design-build", a project delivery method subject to a three-stage qualifications-based selection for which the design and construction services are furnished under one contract;

(2) "Design-build contract", a contract which is subject to a three-stage qualifications-based selection process similar to that described in sections 8.285 to 8.291 between a political subdivision and a design-builder to furnish the architectural, engineering, and related design services and the labor, materials, supplies, equipment, and other construction services required for a design-build project;

(3) "Design-build project", the design, construction, alteration, addition, remodeling, or improvement of any buildings or facilities under contract with a political subdivision. Such design-build projects include, but are not limited to:

(a) Civil works projects, such as roads, streets, bridges, utilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects, **but excluding water and wastewater storage, conveyance, or treatment facility projects**; and

(b) Noncivil works projects, such as buildings, site improvements, and other structures, habitable or not, commonly designed by architects in excess of seven million dollars;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (4) "Design-builder", any individual, partnership, joint venture, or corporation subject
19 to a qualification-based selection that offers to provide or provides design services and general
20 contracting services through a design-build contract in which services within the scope of the
21 practice of professional architecture or engineering are performed respectively by a licensed
22 architect or licensed engineer and in which services within the scope of general contracting are
23 performed by a general contractor or other legal entity that furnishes architecture or engineering
24 services and construction services either directly or through subcontracts or joint ventures;

25 (5) "Design criteria consultant", a person, corporation, partnership, or other legal entity
26 duly licensed and authorized to practice architecture or professional engineering in this state
27 under chapter 327 who is employed by or contracted by the political subdivision to assist the
28 political subdivision in the development of project design criteria, requests for proposals,
29 evaluation of proposals, the evaluation of the construction under a design-build contract to
30 determine adherence to the design criteria, and any additional services requested by the political
31 ~~subdivisions~~ **subdivision** to represent its interests in relation to a project. The design criteria
32 consultant may not submit a proposal or furnish design or construction services for the
33 design-build contract for which its services were sought;

34 (6) "Design criteria package", performance-oriented program, scope, and specifications
35 for the design-build project sufficient to permit a design-builder to prepare a response to a
36 political subdivision's request for proposals for a design-build project, which may include
37 capacity, durability, standards, ingress and egress requirements, performance requirements,
38 description of the site, surveys, soil and environmental information concerning the site, interior
39 space requirements, material quality standards, design and construction schedules, site
40 development requirements, provisions for utilities, storm water retention and disposal, parking
41 requirements, applicable governmental code requirements, preliminary designs for the project
42 or portions thereof, and other criteria for the intended use of the project;

43 (7) "Design professional services", services that are:

44 (a) Within the practice of architecture as defined in section 327.091, or within the
45 practice of professional engineering as defined in section 327.181; or

46 (b) Performed by a licensed or authorized architect or professional engineer in
47 connection with the architect's or professional engineer's employment or practice;

48 (8) "Proposal", an offer in response to a request for proposals by a design-builder to enter
49 into a design-build contract for a design-build project under this section;

50 (9) "Request for proposal", the document by which the political subdivision solicits
51 proposals for a design-build contract;

52 (10) "Stipend", an amount paid to the unsuccessful but responsive, short-listed
53 design-builders to defray the cost of participating in phase II of the selection process described
54 in this section.

55 2. In using a design-build contract, the political subdivision shall determine the scope
56 and level of detail required to permit qualified persons to submit proposals in accordance with
57 the request for proposals given the nature of the project.

58 3. A design criteria consultant shall be employed or retained by the political subdivision
59 to assist in preparation of the design criteria package and request for proposal, perform periodic
60 site visits to observe adherence to the design criteria, prepare progress reports, review and
61 approve progress and final pay applications of the design-builder, review shop drawings and
62 submissions, provide input in disputes, help interpret the construction documents, perform
63 inspections upon substantial and final completion, assist in warranty inspections, and provide any
64 other professional service assisting with the project administration. The design criteria
65 consultant may also evaluate construction as to the adherence of the design criteria. The
66 consultant shall be selected and its contract negotiated in compliance with sections 8.285 to
67 8.291 unless the consultant is a direct employee of the political subdivision.

68 4. The political subdivision shall publicly disclose at a regular meeting its intent to
69 utilize the design-build method and its project design criteria at least one week prior to
70 publishing the request for proposals. Notice of requests for proposals shall be advertised by
71 publication in a newspaper of general circulation published in the county where the political
72 subdivision is located once a week for two consecutive weeks prior to opening the proposals, or
73 by a virtual notice procedure that notifies interested parties for at least twenty various purchases,
74 design contracts, construction contracts, or other contracts each year for the political subdivision.
75 The political subdivision shall publish a notice of a request for proposal with a description of the
76 project, the procedures for submission, and the selection criteria to be used.

77 5. The political subdivision shall establish in the request for proposal a time, place, and
78 other specific instructions for the receipt of proposals. Proposals not submitted in strict
79 accordance with the instructions shall be subject to rejection.

80 6. A request for proposal shall be prepared for each design-build contract containing at
81 minimum the following elements:

82 (1) The procedures to be followed for submitting proposals, the criteria for evaluating
83 proposals and their relative weight, and the procedures for making awards;

84 (2) The proposed terms and conditions for the design-build contract, if available;

85 (3) The design criteria package;

86 (4) A description of the drawings, specifications, or other information to be submitted
87 with the proposal, with guidance as to the form and level of completeness of the drawings,
88 specifications, or other information that will be acceptable;

89 (5) A schedule for planned commencement and completion of the design-build contract,
90 if any;

91 (6) Budget limits for the design-build contract, if any;

92 (7) Requirements including any available ratings for performance bonds, payment bonds,
93 and insurance, if any;

94 (8) The amount of the stipend which will be available; and

95 (9) Any other information that the political subdivision in its discretion chooses to
96 supply including, but not limited to, surveys, soil reports, drawings of existing structures,
97 environmental studies, photographs, references to public records, or affirmative action and
98 minority business enterprise requirements consistent with state and federal law.

99 7. The political subdivision shall solicit proposals in a three-stage process. Phase I shall
100 be the solicitation of qualifications of the design-build team. Phase II shall be the solicitation
101 of a technical proposal including conceptual design for the project. Phase III shall be the
102 proposal of the construction cost.

103 8. The political subdivision shall review the submissions of the proposals and assign
104 points to each proposal in accordance with this section and as set out in the instructions of the
105 request for proposal.

106 9. Phase I shall require all design-builders to submit a statement of qualification that
107 shall include, but not be limited to:

108 (1) Demonstrated ability to perform projects comparable in design, scope, and
109 complexity;

110 (2) References of owners for whom design-build projects, construction projects, or
111 design projects have been performed;

112 (3) Qualifications of personnel who will manage the design and construction aspects of
113 the project; and

114 (4) The names and qualifications of the primary design consultants and the primary trade
115 contractors with whom the design-builder proposes to subcontract or joint venture. The
116 design-builder ~~may~~ **shall** not replace an identified contractor, subcontractor, design consultant,
117 or subconsultant without the written approval of the political subdivision.

118 10. The political subdivision shall evaluate the qualifications of all the design-builders
119 who submitted proposals in accordance with the instructions of the request for proposal.
120 Architectural and engineering services on the project shall be evaluated in accordance with the
121 requirements of sections 8.285 and 8.291. Qualified design-builders selected by the evaluation

team may proceed to phase II of the selection process. Design-builders lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to phase II of the process. This process of short listing shall narrow the number of qualified design-builders to not more than five nor fewer than two. Under no circumstances shall price or fees be a part of the prequalification criteria. Design-builders may be interviewed in either phase I or phase II of the process. Points assigned in phase I of the evaluation process shall not carry forward to phase II of the process. All qualified design-builders shall be ranked on points given in phases II and III only.

11. The political subdivision shall have discretion to disqualify any design-builder who, in the political subdivision's opinion, lacks the minimum qualifications required to perform the work.

12. Once a sufficient number of no more than five and no fewer than two qualified design-builders have been selected, the design-builders shall have a specified amount of time in which to assemble phase II and phase III proposals.

13. Phase II of the process shall be conducted as follows:

(1) The political subdivision shall invite the top qualified design-builders to participate in phase II of the process;

(2) A design-builder shall submit its design for the project to the level of detail required in the request for proposal. The design proposal shall demonstrate compliance with the requirements set out in the request for proposal;

(3) The ability of the design-builder to meet the schedule for completing a project as specified by the political subdivision may be considered as an element of evaluation in phase II;

(4) Up to twenty percent of the points awarded to each design-builder in phase II may be based on each design-builder's qualifications and ability to design, contract, and deliver the project on time and within the budget of the political subdivision;

(5) Under no circumstances shall the design proposal contain any reference to the cost of the proposal; and

(6) The submitted designs shall be evaluated and assigned points in accordance with the requirements of the request for proposal. Phase II shall account for not less than forty percent of the total point score as specified in the request for proposal.

14. Phase III shall be conducted as follows:

(1) The phase III proposal shall provide a firm, fixed cost of design and construction. The proposal shall be accompanied by bid security and any other items, such as statements of minority participation as required by the request for proposal;

(2) Cost proposals shall be submitted in accordance with the instructions of the request for proposal. The political subdivision shall reject any proposal that is not submitted on time.

158 Phase III shall account for not less than forty percent of the total point score as specified in the
159 request for proposal;

160 (3) Proposals for phase II and phase III shall be submitted concurrently at the time and
161 place specified in the request for proposal, but in separate envelopes or other means of
162 submission. The phase III cost proposals shall be opened only after the phase II design proposals
163 have been evaluated and assigned points, ranked in order, and posted;

164 (4) Cost proposals shall be opened and read aloud at the time and place specified in the
165 request for proposal. At the same time and place, the evaluation team shall make public its
166 scoring of phase II. Cost proposals shall be evaluated in accordance with the requirements of
167 the request for proposal. In evaluating the cost proposals, the lowest responsive bidder shall be
168 awarded the total number of points assigned to be awarded in phase III. For all other bidders,
169 cost points shall be calculated by reducing the maximum points available in phase III by at least
170 one percent for each percentage point by which the bidder exceeds the lowest bid and the points
171 assigned shall be added to the points assigned for phase II for each design-builder;

172 (5) If the political subdivision determines that it is not in the best interest of the political
173 subdivision to proceed with the project pursuant to the proposal offered by the design-builder
174 with the highest total number of points, the political subdivision shall reject all proposals. In this
175 event, all qualified and responsive design-builders with lower point totals shall receive a stipend
176 and the responsive design-builder with the highest total number of points shall receive an amount
177 equal to two times the stipend. If the political subdivision decides to award the project, the
178 responsive design-builder with the highest number of points shall be awarded the contract; and

179 (6) If all proposals are rejected, the political subdivision may solicit new proposals using
180 different design criteria, budget constraints, or qualifications.

181 15. As an inducement to qualified design-builders, the political subdivision shall pay a
182 reasonable stipend, the amount of which shall be established in the request for proposal, to each
183 prequalified design-builder whose proposal is responsive but not accepted. Such stipend shall
184 be no less than one-half of one percent of the total project budget. Upon payment of the stipend
185 to any unsuccessful design-builder, the political subdivision shall acquire a nonexclusive right
186 to use the design submitted by the design-builder, and the design-builder shall have no further
187 liability for the use of the design by the political subdivision in any manner. If the design-builder
188 desires to retain all rights and interest in the design proposed, the design-builder shall forfeit the
189 stipend.

190 16. (1) As used in this subsection, "wastewater or water contract" means any
191 design-build contract that involves the provision of engineering and construction services either
192 directly by a party to the contract or through subcontractors retained by a party to the contract
193 for a wastewater or water storage, conveyance, or treatment facility project.

194 (2) Any political subdivision may enter into a wastewater or water contract for
195 design-build of a wastewater or water project.

196 (3) In disbursing community development block grants under 42 U.S.C. Sections 5301
197 to 5321, the department of economic development shall not reject wastewater or water projects
198 solely for utilizing wastewater or water contracts.

199 (4) The department of natural resources shall not preclude wastewater or water contracts
200 from consideration for funding provided by the water and wastewater loan fund under section
201 644.122.

202 (5) A political subdivision planning a wastewater or water design-build project shall
203 retain an engineer duly licensed in this state to assist in preparing any necessary documents and
204 specifications and evaluations of design-build proposals.

205 17. The payment bond requirements of section 107.170 shall apply to the design-build
206 project. All persons furnishing design services shall be deemed to be covered by the payment
207 bond the same as any person furnishing labor and materials. The performance bond for the
208 design-builder shall not cover any damages of the type specified to be covered by the
209 professional liability insurance established by the political subdivision in the request for
210 proposals.

211 18. Any person or firm performing architectural, engineering, landscape architecture, or
212 land-surveying services for the design-builder on the design-build project shall be duly licensed
213 or authorized in this state to provide such services as required by chapter 327.

214 19. Any political subdivision engaged in a project under this section which impacts a
215 railroad regulated by the Federal Railroad Administration shall consult with the affected railroad
216 on required specifications relating to clearance, safety, insurance, and indemnification to be
217 included in the construction documents for such project.

218 20. Under section 327.465, any design-builder that enters into a design-build contract
219 with a political subdivision is exempt from the requirement that such person or entity hold a
220 license or that such corporation hold a certificate of authority if the architectural, engineering,
221 or land-surveying services to be performed under the design-build contract are performed
222 through subcontracts or joint ventures with properly licensed or authorized persons or entities,
223 and not performed by the design-builder or its own employees.

224 21. This section shall not apply to:

225 (1) Any metropolitan sewer district established under Article VI, Section 30(a) of the
226 Constitution of Missouri; or

227 (2) Any special charter city, or any city or county governed by home rule under Article
228 VI, ~~[Section 18]~~ **Sections 18(a) to 18(r)** or **Section 19** of the Constitution of Missouri that has
229 adopted a design-build process via ordinance, rule, or regulation.

230 22. The authority to use design-build and design-build contracts provided under this
231 section shall expire September 1, 2026.

2 ~~[67.5070. 1. As used in this section, "design-build contract" shall mean~~
3 ~~any contract that furnishes architecture or engineering services and construction~~
4 ~~services either directly or through subcontracts.]~~

5 ~~2. Any political subdivision may enter into a design-build contract for~~
6 ~~engineering, design, and construction of a wastewater or water treatment project.~~

7 ~~3. In disbursing community development block grants under 42 U.S.C.~~
8 ~~Sections 5301 to 5321, the department of economic development shall not reject~~
9 ~~wastewater or water treatment projects solely for utilizing design-build.]~~

10 ~~4. The department of natural resources shall not preclude design-build~~
11 ~~contracts from consideration of funding provided by the water and wastewater~~
 ~~loan fund established in section 644.122.]~~

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