

SENATE BILL NO. 10

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

0303S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 67.5060, RSMo, and to enact in lieu thereof one new section relating to construction regulation.

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

Section A. Section 67.5060, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 67.5060, to read as follows: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

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 subdivision. Such design-build projects include, but are
19 not limited to:

20 (a) Civil works projects, such as roads, streets,
21 bridges, utilities, airport runways and taxiways, storm
22 drainage and flood control projects, or transit projects; and

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

27 (4) "Design-builder", any individual, partnership,
28 joint venture, or corporation subject to a qualification-
29 based selection that offers to provide or provides design
30 services and general contracting services through a design-
31 build contract in which services within the scope of the
32 practice of professional architecture or engineering are
33 performed respectively by a licensed architect or licensed
34 engineer and in which services within the scope of general
35 contracting are performed by a general contractor or other
36 legal entity that furnishes architecture or engineering
37 services and construction services either directly or
38 through subcontracts or joint ventures;

39 (5) "Design criteria consultant", a person,
40 corporation, partnership, or other legal entity duly
41 licensed and authorized to practice architecture or
42 professional engineering in this state under chapter 327 who
43 is employed by or contracted by the political subdivision to
44 assist the political subdivision in the development of
45 project design criteria, requests for proposals, evaluation
46 of proposals, the evaluation of the construction under a
47 design-build contract to determine adherence to the design
48 criteria, and any additional services requested by the
49 political [subdivisions] **subdivision** to represent its

50 interests in relation to a project. The design criteria
51 consultant may not submit a proposal or furnish design or
52 construction services for the design-build contract for
53 which its services were sought;

54 (6) "Design criteria package", performance-oriented
55 program, scope, and specifications for the design-build
56 project sufficient to permit a design-builder to prepare a
57 response to a political subdivision's request for proposals
58 for a design-build project, which may include capacity,
59 durability, standards, ingress and egress requirements,
60 performance requirements, description of the site, surveys,
61 soil and environmental information concerning the site,
62 interior space requirements, material quality standards,
63 design and construction schedules, site development
64 requirements, provisions for utilities, storm water
65 retention and disposal, parking requirements, applicable
66 governmental code requirements, preliminary designs for the
67 project or portions thereof, and other criteria for the
68 intended use of the project;

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

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

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

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

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

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

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

91 3. A design criteria consultant shall be employed or
92 retained by the political subdivision to assist in
93 preparation of the design criteria package and request for
94 proposal, perform periodic site visits to observe adherence
95 to the design criteria, prepare progress reports, review and
96 approve progress and final pay applications of the design-
97 builder, review shop drawings and submissions, provide input
98 in disputes, help interpret the construction documents,
99 perform inspections upon substantial and final completion,
100 assist in warranty inspections, and provide any other
101 professional service assisting with the project
102 administration. The design criteria consultant may also
103 evaluate construction as to the adherence of the design
104 criteria. The consultant shall be selected and its contract
105 negotiated in compliance with sections 8.285 to 8.291 unless
106 the consultant is a direct employee of the political
107 subdivision.

108 4. The political subdivision shall publicly disclose
109 at a regular meeting its intent to utilize the design-build
110 method and its project design criteria at least one week
111 prior to publishing the request for proposals. Notice of
112 requests for proposals shall be advertised by publication in
113 a newspaper of general circulation published in the county

114 where the political subdivision is located once a week for
115 two consecutive weeks prior to opening the proposals, or by
116 a virtual notice procedure that notifies interested parties
117 for at least twenty various purchases, design contracts,
118 construction contracts, or other contracts each year for the
119 political subdivision. The political subdivision shall
120 publish a notice of a request for proposal with a
121 description of the project, the procedures for submission,
122 and the selection criteria to be used.

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

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

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

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

136 (3) The design criteria package;

137 (4) A description of the drawings, specifications, or
138 other information to be submitted with the proposal, with
139 guidance as to the form and level of completeness of the
140 drawings, specifications, or other information that will be
141 acceptable;

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

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

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

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

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

157 7. The political subdivision shall solicit proposals
158 in a three-stage process. Phase I shall be the solicitation
159 of qualifications of the design-build team. Phase II shall
160 be the solicitation of a technical proposal including
161 conceptual design for the project. Phase III shall be the
162 proposal of the construction cost.

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

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

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

172 (2) References of owners for whom design-build
173 projects, construction projects, or design projects have
174 been performed;

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

177 (4) The names and qualifications of the primary design
178 consultants and the primary trade contractors with whom the
179 design-builder proposes to subcontract or joint venture.
180 The design-builder [may] **shall** not replace an identified
181 contractor, subcontractor, design consultant, or
182 subconsultant without the written approval of the political
183 subdivision.

184 10. The political subdivision shall evaluate the
185 qualifications of all the design-builders who submitted
186 proposals in accordance with the instructions of the request
187 for proposal. Architectural and engineering services on the
188 project shall be evaluated in accordance with the
189 requirements of sections 8.285 and 8.291. Qualified design-
190 builders selected by the evaluation team may proceed to
191 phase II of the selection process. Design-builders lacking
192 the necessary qualifications to perform the work shall be
193 disqualified and shall not proceed to phase II of the
194 process. This process of short listing shall narrow the
195 number of qualified design-builders to not more than five
196 nor fewer than two. Under no circumstances shall price or
197 fees be a part of the prequalification criteria. Design-
198 builders may be interviewed in either phase I or phase II of
199 the process. Points assigned in phase I of the evaluation
200 process shall not carry forward to phase II of the process.
201 All qualified design-builders shall be ranked on points
202 given in phases II and III only.

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

207 12. Once a sufficient number of no more than five and
208 no fewer than two qualified design-builders have been

209 selected, the design-builders shall have a specified amount
210 of time in which to assemble phase II and phase III
211 proposals.

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

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

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

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

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

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

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

237 14. Phase III shall be conducted as follows:

238 (1) The phase III proposal shall provide a firm, fixed
239 cost of design and construction. The proposal shall be
240 accompanied by bid security and any other items, such as

241 statements of minority participation as required by the
242 request for proposal;

243 (2) Cost proposals shall be submitted in accordance
244 with the instructions of the request for proposal. The
245 political subdivision shall reject any proposal that is not
246 submitted on time. Phase III shall account for not less
247 than forty percent of the total point score as specified in
248 the request for proposal;

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

255 (4) Cost proposals shall be opened and read aloud at
256 the time and place specified in the request for proposal.
257 At the same time and place, the evaluation team shall make
258 public its scoring of phase II. Cost proposals shall be
259 evaluated in accordance with the requirements of the request
260 for proposal. In evaluating the cost proposals, the lowest
261 responsive bidder shall be awarded the total number of
262 points assigned to be awarded in phase III. For all other
263 bidders, cost points shall be calculated by reducing the
264 maximum points available in phase III by at least one
265 percent for each percentage point by which the bidder
266 exceeds the lowest bid and the points assigned shall be
267 added to the points assigned for phase II for each design-
268 builder;

269 (5) If the political subdivision determines that it is
270 not in the best interest of the political subdivision to
271 proceed with the project pursuant to the proposal offered by
272 the design-builder with the highest total number of points,

273 the political subdivision shall reject all proposals. In
274 this event, all qualified and responsive design-builders
275 with lower point totals shall receive a stipend and the
276 responsive design-builder with the highest total number of
277 points shall receive an amount equal to two times the
278 stipend. If the political subdivision decides to award the
279 project, the responsive design-builder with the highest
280 number of points shall be awarded the contract; and

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

284 15. As an inducement to qualified design-builders, the
285 political subdivision shall pay a reasonable stipend, the
286 amount of which shall be established in the request for
287 proposal, to each prequalified design-builder whose proposal
288 is responsive but not accepted. Such stipend shall be no
289 less than one-half of one percent of the total project
290 budget. Upon payment of the stipend to any unsuccessful
291 design-builder, the political subdivision shall acquire a
292 nonexclusive right to use the design submitted by the design-
293 builder, and the design-builder shall have no further
294 liability for the use of the design by the political
295 subdivision in any manner. If the design-builder desires to
296 retain all rights and interest in the design proposed, the
297 design-builder shall forfeit the stipend.

298 16. (1) As used in this subsection, "wastewater or
299 water contract" means any design-build contract that
300 involves the provision of engineering and construction
301 services either directly by a party to the contract or
302 through subcontractors retained by a party to the contract
303 for a wastewater or water storage, conveyance, or treatment
304 facility project.

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

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

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

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

321 17. The payment bond requirements of section 107.170
322 shall apply to the design-build project. All persons
323 furnishing design services shall be deemed to be covered by
324 the payment bond the same as any person furnishing labor and
325 materials. The performance bond for the design-builder
326 shall not cover any damages of the type specified to be
327 covered by the professional liability insurance established
328 by the political subdivision in the request for proposals.

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

334 19. Any political subdivision engaged in a project
335 under this section which impacts a railroad regulated by the
336 Federal Railroad Administration shall consult with the

337 affected railroad on required specifications relating to
338 clearance, safety, insurance, and indemnification to be
339 included in the construction documents for such project.

340 20. Under section 327.465, any design-builder that
341 enters into a design-build contract with a political
342 subdivision is exempt from the requirement that such person
343 or entity hold a license or that such corporation hold a
344 certificate of authority if the architectural, engineering,
345 or land-surveying services to be performed under the design-
346 build contract are performed through subcontracts or joint
347 ventures with properly licensed or authorized persons or
348 entities, and not performed by the design-builder or its own
349 employees.

350 21. This section shall not apply to:

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

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

358 [22. The authority to use design-build and design-
359 build contracts provided under this section shall expire
360 September 1, 2026.]

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