

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1127
101ST GENERAL ASSEMBLY

2380H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 8.260, 8.675, 8.677, 8.679, 34.055, 34.057, 34.058, 34.100, 34.203, 34.206, 34.209, 34.212, 34.217, and 34.218, RSMo, and to enact in lieu thereof fourteen new sections relating to public expenditures.

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

Section A. Sections 8.260, 8.675, 8.677, 8.679, 34.055, 34.057, 34.058, 34.100, 34.203, 2 34.206, 34.209, 34.212, 34.217, and 34.218, RSMo, are repealed and fourteen new sections 3 enacted in lieu thereof, to be known as sections 8.260, 8.675, 8.677, 8.679, 8.960, 8.962, 8.964, 4 8.966, 8.968, 8.970, 8.972, 8.974, 34.055, and 34.100, to read as follows:

8.260. All appropriations made by the general assembly amounting to one hundred 2 thousand dollars or more for the construction, renovation, or repair of facilities shall be expended 3 in the following manner:

4 (1) The agency requesting payment shall provide the commissioner of administration 5 with satisfactory evidence that a bona fide contract, procured in accordance with all applicable 6 procedures, exists for the work for which payment is requested;

7 (2) All requests for payment shall be approved by the architect or engineer registered to 8 practice in the state of Missouri who designed the project or who has been assigned to oversee 9 it;

10 (3) In order to guarantee completion of the contract, the agency or officer shall retain a 11 portion of the contract value in accordance with the provisions of section [~~34.057~~] **8.960**;

12 (4) A contractor may be paid for materials delivered to the site or to a storage facility 13 approved by the director of the division of facilities management, design and construction as 14 having adequate safeguards against loss, theft or conversion.

15

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.

16 In no case shall the amount contracted for exceed the amount appropriated by the general
17 assembly for the purpose.

8.675. 1. As used in [~~sections 8.675 to 8.687~~] **this section**, the following terms mean:

2 (1) "Construction management services" includes:

3 (a) Services provided in the planning and design phases of the project including, but not
4 limited to, consulting with, advising, assisting and making recommendations to the public owner
5 and architect, engineer or registered landscape architect on all aspects of planning for project
6 construction; reviewing all plans and specifications as they are being developed and making
7 recommendations with respect to construction feasibility, availability of material and labor, time
8 requirements for procurement and construction, and projected costs; making, reviewing and
9 refining budget estimates based on the public owner's program and other available information;
10 making recommendations to the public owner and the architect or engineer regarding the division
11 of work in the plans and specifications to facilitate the bidding and awarding of contracts;
12 soliciting the interest of capable contractors and assisting the owner in taking bids on the project;
13 analyzing the bids received and awarding contracts; and preparing and monitoring a progress
14 schedule during the design phase of the project and preparation of a proposed construction
15 schedule; and

16 (b) Services provided in the construction phase of the project including, but not limited
17 to, maintaining competent supervisory staff to coordinate and provide general direction of the
18 work and progress of the contractors on the project; observing the work as it is being performed
19 for general conformance with working drawings and specifications; establishing procedures for
20 coordinating among the public owner, architect or engineer, contractors and construction
21 manager with respect to all aspects of the project and implementing such procedures;
22 maintaining job site records and making appropriate progress reports; implementing labor policy
23 in conformance with the requirements of the public owner; reviewing the safety and equal
24 opportunity programs of each contractor for conformance with the public owner's policy and
25 making recommendations; reviewing and processing all applications for payment by involved
26 contractors and material suppliers in accordance with the terms of the contract; making
27 recommendations for and processing requests for changes in the work and maintaining records
28 of change orders; scheduling and conducting job meetings to ensure orderly progress of the work;
29 developing and monitoring a project progress schedule, coordinating and expediting the work
30 of all contractors and providing periodic status reports to the owner and the architect or engineer;
31 and, establishing and maintaining a cost control system and conducting meetings to review costs;
32 **"Construction management services" does not include services provided by a construction**
33 **manager-at-risk as defined in section 8.677.**

34 (2) "Construction manager", any person providing construction management services for
35 a public owner. **"Construction manager" does not include a construction manager-at-risk**
36 **as defined in section 8.677;**

37 (3) "Public owner", any public body, as defined in section 290.210.

38 **2. The appropriate officer, board, or agency of a public owner may elect to engage**
39 **the construction management services of a construction manager when planning,**
40 **designing, and constructing a building or structure or when improving, altering, or**
41 **repairing a building or structure. Construction management services may be used by the**
42 **public owner in the preconstruction phase or the construction phase of a public works**
43 **project or both.**

44 **3. When, in the discretion of the public owner, it is determined that a public works**
45 **project shall be performed with a negotiated contract for construction management**
46 **services, such public owner shall solicit proposals from qualified construction managers**
47 **by publishing a request for proposals for a period of ten or more days on the website of the**
48 **public owner or through an electronic procurement system. The number of such proposals**
49 **shall not be restricted or curtailed but shall be open to all construction managers**
50 **complying with the terms upon which the proposals are requested.**

51 **4. When selecting a construction manager for a project, the public owner shall**
52 **consider the following:**

53 (1) Fees for overhead and profit;

54 (2) Costs for reimbursable items as defined in the public owner's request for
55 proposal;

56 (3) Qualifications;

57 (4) Demonstration of ability to perform projects comparable in design, scope, and
58 complexity;

59 (5) Demonstration of good faith efforts to achieve compliance with federal, state,
60 and local affirmative action requirements;

61 (6) References from owners for whom construction management has been
62 performed;

63 (7) Financial strength;

64 (8) Qualifications of in-house personnel who will manage the project; and

65 (9) Demonstration of successful management systems employed for the purposes
66 of estimating, scheduling, and cost controls.

67

68 **The public owner may negotiate a contract for construction management services with any**
69 **construction manager selected according to the criteria of this subsection. If the public**

70 owner is unable to negotiate a contract for the type of services required with any of the
71 construction managers selected for a project at a price determined by the public owner to
72 be fair and reasonable, the public owner shall reevaluate the necessary construction
73 management services, including the scope and reasonable fee requirements, and again
74 solicit proposals from construction managers complying with the terms of the revised
75 requests for proposal.

76 **5. Upon award of a construction management services contract, the successful**
77 **construction manager shall contract with the public owner to furnish his or her skill and**
78 **judgment in cooperation with, and reliance upon, the services of the project architect or**
79 **engineer. The construction manager shall furnish the business administration,**
80 **management of the construction process, and other specified services to the public owner**
81 **and shall perform in an expeditious and economical manner consistent with the interest**
82 **of the public owner. If the public owner determines it to be in the public's best interest,**
83 **the construction manager may provide or perform basic services for which reimbursement**
84 **is provided in the general conditions to the construction management services contract.**
85 **The construction manager shall not be permitted to bid on or perform any of the actual**
86 **construction on a public works project in which he or she is acting as construction**
87 **manager, nor shall any construction firm that controls, is controlled by, or shares common**
88 **ownership or control with the construction manager be allowed to bid on or perform work**
89 **on such project. The actual construction work on the project shall be awarded by**
90 **competitive bidding as provided by law. All successful bidders shall contract directly with**
91 **the public owner but shall perform at the direction of the construction manager unless**
92 **otherwise provided in the construction manager's contract with the public owner. All**
93 **successful bidders shall provide payment and performance bids to the public owner. All**
94 **successful bidders shall meet all obligations of a prime contractor to whom a contract is**
95 **awarded, pertaining to the payment of prevailing wages under sections 290.210 to 290.340.**
96 **In addition, all nonresident employers shall meet the bonding and registration**
97 **requirements of sections 285.230 to 285.234.**

98 **6. No construction management services contract shall be awarded by a public**
99 **owner on a negotiated basis, as provided in this section, if the construction manager or**
100 **firm that controls, is controlled by, or shares common ownership or control with the**
101 **construction manager guarantees, warrants, or otherwise assumes financial responsibility**
102 **for the work of others on the project or furnishes or guarantees a performance or payment**
103 **bond for other contractors on the project. In any such case, the contract for construction**
104 **management services shall be let by competitive bidding as in the case of contract for**
105 **construction work or as provided in section 8.677, if applicable.**

106 **7. (1) A construction manager shall not be deemed a contractor for the purposes**
107 **of section 107.170.**

108 **(2) Nothing in this section shall apply to a public body doing work if the**
109 **construction is done by employees of the public body.**

~~8.677. [The appropriate officer, board or agency of a public owner may elect to engage
2 the construction management services of a construction manager when planning, designing and
3 constructing a building or structure or when improving, altering or repairing a building or
4 structure. Construction management services may be used by the public owner in the
5 preconstruction phase or the construction phase of public works project or in both phases of the
6 project.]~~ **1. As used in this section, the following terms mean:**

7 **(1) "Construction manager", the legal entity that proposes to enter into a**
8 **construction management-at-risk contract under this section;**

9 **(2) "Construction manager-at-risk", a sole proprietorship, partnership,**
10 **corporation, or other legal entity that assumes the risk for the construction, rehabilitation,**
11 **alteration, or repair of a project at the contracted price as a general contractor and**
12 **provides consultation to the division of facilities management, design and construction**
13 **regarding construction during and after the design of the project;**

14 **(3) "Division", the office of administration's division of facilities management,**
15 **design and construction.**

16 **2. The division may use the construction manager-at-risk method for any project**
17 **within its authority in excess of three hundred thousand dollars. In using that method and**
18 **in entering into a contract for the services of a construction manager-at-risk, the division**
19 **shall follow the procedures prescribed by this section.**

20 **3. Before or concurrently with selecting a construction manager-at-risk, the**
21 **division shall select or designate an engineer or architect who shall prepare the**
22 **construction documents for the project and who shall comply with all state laws, as**
23 **applicable. If the engineer or architect is not a full-time employee of the division, the**
24 **division shall select the engineer or architect on the basis of demonstrated competence and**
25 **qualifications as provided by sections 8.285 to 8.291. The division's engineer or architect**
26 **for a project shall not serve, alone or in combination with another, as the construction**
27 **manager-at-risk. This subsection does not prohibit the division's engineer or architect**
28 **from providing customary construction phase services under the engineer's or architect's**
29 **original professional service agreement in accordance with applicable licensing laws.**

30 **4. The division may provide or contract for, independently of the construction**
31 **manager-at-risk, inspection services, testing of construction materials, engineering, and**
32 **verification of testing services necessary for acceptance of the project by the division.**

33 **5. The division shall select the construction manager-at-risk using the following**
34 **two-step process:**

35 **(1) The division shall prepare a request for qualifications that includes general**
36 **information on the project site, project scope, schedule, selection criteria, the time and**
37 **place for receipt of proposals or qualifications, as applicable, and other information that**
38 **may assist the division in its selection of a construction manager-at-risk. The division shall**
39 **state the selection criteria in the request for proposals or qualifications, as applicable. The**
40 **selection criteria may include the construction manager's experience, past performance,**
41 **safety record, proposed personnel and methodology, and other appropriate factors that**
42 **demonstrate the capability of the construction manager-at-risk. The division shall not**
43 **request fees or prices in the first step; and**

44 **(2) The division may request that five or fewer construction managers, selected**
45 **solely on the basis of qualifications, provide additional information, including the**
46 **construction manager-at-risk's proposed fee and its price for fulfilling the general**
47 **conditions. Qualifications shall account for a minimum of forty percent of the evaluation.**
48 **Cost shall account for a maximum of sixty percent of the evaluation.**

49 **6. The division shall publish the request for proposals or qualifications for a period**
50 **of ten or more days on the website of the division or through an electronic procurement**
51 **system.**

52 **7. For each step in subsection 5, the division shall receive and open the names and**
53 **proposals or qualifications of the construction managers at the date and time specified in**
54 **the request for proposals or qualifications. The names of the construction managers shall**
55 **be made publicly available. Within forty-five days after the date of opening the proposals**
56 **or qualification submissions, the division or its representative shall evaluate and rank each**
57 **proposal or qualification submission submitted in relation to the criteria set forth in the**
58 **request for proposals or request for qualifications. The division shall interview at least two**
59 **of the top qualified offerors as part of the final selection.**

60 **8. The division or its representative shall select the construction manager whose**
61 **proposal offers the best value for the division based on the published selection criteria and**
62 **on its ranking evaluation. The division or its representative shall first attempt to negotiate**
63 **a contract with the selected construction manager. If the division or its representative is**
64 **unable to negotiate a satisfactory contract with the selected construction manager, the**
65 **division or its representative shall, formally and in writing, end negotiations with that**
66 **construction manager and proceed to negotiate with the next construction manager in the**
67 **order of the selection ranking until a contract is reached or negotiations with all ranked**
68 **construction managers end.**

69 **9. The construction manager-at-risk shall perform construction work equal in**
70 **value to at least fifteen percent of the estimated cost of construction using individuals**
71 **directly employed by the construction manager-at-risk. A construction manager-at-risk**
72 **shall publicly solicit and receive bids or proposals from trade contractors or**
73 **subcontractors for the performance of all major elements of the work other than work that**
74 **the construction manager-at-risk self-performs. The construction manager-at-risk shall**
75 **solicit bids from potential contractors or subcontractors by newspaper advertising, by**
76 **posting a notice on the website of at least one construction trade industry association, or**
77 **by other solicitation methods agreed to by the division that are likely to reach a substantial**
78 **number of qualified contractors or subcontractors. All sealed bids or proposals shall be**
79 **submitted at the time and location as specified in the solicitation for bids or proposals and**
80 **shall be opened and the identity of each bidder and their bid amount shall be made**
81 **publicly available.**

82 **10. The construction manager-at-risk and the division or its representative shall**
83 **review all trade contractor, subcontractor, or construction manager-at-risk bids or**
84 **proposals in a manner that does not disclose the contents of the bid or proposal during the**
85 **selection process to a person not employed by the construction manager-at-risk, engineer,**
86 **architect, or division involved with the project. After all proposals have been evaluated**
87 **and clarified, the award of all subcontracts shall be made public.**

88 **11. If the construction manager-at-risk reviews, evaluates, and recommends to the**
89 **division a bid or proposal from a trade contractor or subcontractor but the division**
90 **requires another bid or proposal to be accepted, the division shall compensate the**
91 **construction manager-at-risk by a change in price, time, or guaranteed maximum cost for**
92 **any additional cost and risk that the construction manager-at-risk may incur because of**
93 **the division's requirement that another bid or proposal be accepted.**

94 **12. If a selected trade contractor or subcontractor materially defaults in the**
95 **performance of its work or fails to execute a subcontract after being selected in accordance**
96 **with this section, the construction manager-at-risk may itself, without soliciting bids, fulfill**
97 **the contract requirements or select a replacement trade contractor or subcontractor to**
98 **fulfill the contract requirements. The penal sums of the performance and payment bonds**
99 **delivered to the division shall each be in an amount equal to the fixed contract amount or**
100 **guaranteed maximum price. The construction manager-at-risk shall deliver the bonds not**
101 **later than the tenth day after the date the fixed contract amount or guaranteed maximum**
102 **price is established.**

~~8.679. [When, in the discretion of the public owner, it is determined that a public works~~
2 ~~project should be performed with a negotiated contract for construction management services,~~

3 such public owner shall advertise and solicit proposals from qualified construction managers in
4 the following manner: If the total cost for the erection or construction of any building or
5 structure or the improvement, alteration or repair of a building or structure exceeds five hundred
6 thousand dollars, the public owner shall request and solicit proposals by advertising for ten days
7 in one newspaper of general circulation in the county where the work is located. If the cost of
8 the work contemplated exceeds one million five hundred thousand dollars, proposals shall be
9 solicited by advertisement for ten days in two daily newspapers in the state which have not less
10 than fifty thousand daily circulation in addition to the advertisement in the county where the
11 work is located. The number of such proposals shall not be restricted or curtailed, but shall be
12 open to all construction managers complying with the terms upon which the proposals are
13 requested.] 1. As used in this section, the following terms mean:

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

17 (2) "Design-build contract", a contract that is subject to a three-stage,
18 qualifications-based selection process similar to that described in sections 8.285 to 8.291
19 between the division of facilities management, design and construction and a
20 design-builder to furnish the architectural, engineering, and related design services and
21 the labor, materials, supplies, equipment, and other construction services required for a
22 design-build project;

23 (3) "Design-build project", the design, construction, alteration, addition,
24 remodeling, or improvement of any buildings or facilities under contract with the division
25 of facilities management, design and construction. Such design-build projects include, but
26 are not limited to:

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

29 (b) Noncivil works projects such as buildings, site improvements, and other
30 structures, habitable or not, commonly designed by architects in excess of three hundred
31 thousand dollars;

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

38 that furnishes architecture or engineering services and construction services either directly
39 or through subcontracts or joint ventures;

40 (5) "Design criteria consultant", a person, corporation, partnership, or other legal
41 entity duly licensed and authorized to practice architecture or professional engineering in
42 this state under chapter 327 who is employed by or contracted by the division of facilities
43 management, design and construction to assist the division in the development of project
44 design criteria, requests for proposals, evaluation of proposals, the evaluation of the
45 construction under a design-build contract to determine adherence to the design criteria,
46 and any additional services requested by the division of facilities management, design and
47 construction to represent its interests in relation to a project. The design criteria
48 consultant shall not submit a proposal or furnish design or construction services for the
49 design-build contract for which its services were sought;

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

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

61 (a) Within the practice of architecture as defined in section 327.091 or within the
62 practice of professional engineering as defined in section 327.181; or

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

65 (8) "Division" means the office of administration's division of facilities,
66 management design and construction;

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

69 (10) "Request for proposal", the document by which the division of facilities
70 management, design and construction solicits proposals for a design-build contract;

71 (11) "Stipend", an amount paid to the unsuccessful but responsive, short-listed
72 design-builders to defray the cost of participating in phase II of the selection process
73 described in this section.

74 **2. In using a design-build contract, the division shall determine the scope and level**
75 **of detail required to permit qualified persons to submit proposals in accordance with the**
76 **request for proposals given the nature of the project.**

77 **3. A design criteria consultant shall be employed or retained by the division to**
78 **assist in preparation of the design criteria package and request for proposal, perform**
79 **periodic site visits to observe adherence to the design criteria, prepare progress reports,**
80 **review and approve progress and final pay applications of the design-builder, review shop**
81 **drawings and submissions, provide input in disputes, help interpret the construction**
82 **documents, perform inspections upon substantial and final completion, assist in warranty**
83 **inspections, and provide any other professional service assisting with the project**
84 **administration. The design criteria consultant may also evaluate construction as to the**
85 **adherence to the design criteria. The design criteria consultant shall be selected and its**
86 **contract negotiated in compliance with sections 8.285 to 8.291 unless the consultant is a**
87 **direct employee of the division.**

88 **4. The division shall publish the request for proposals for a period of ten or more**
89 **days on the website of the division or through an electronic procurement system.**

90 **5. The division shall establish in the request for proposal a time, place, and other**
91 **specific instructions for the receipt of proposals. Proposals not submitted in strict**
92 **accordance with the instructions shall be subject to rejection.**

93 **6. A request for proposal shall be prepared for each design-build contract and**
94 **contain at minimum the following elements:**

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

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

98 **(3) The design criteria package;**

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

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

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

105 **(7) Requirements including any available ratings for performance bonds, payment**
106 **bonds, and insurance, if any;**

107 **(8) The amount of the stipend that will be available; and**

108 **(9) Any other information that the division in its discretion chooses to supply**
109 **including, but not limited to, surveys, soil reports, drawings of existing structures,**

110 environmental studies, photographs, references to public records, or affirmative action and
111 minority business enterprise requirements consistent with state and federal law.

112 7. The division shall solicit proposals in a three-phase process. Phase I shall be the
113 solicitation of qualifications of the design-build team. Phase II shall be the solicitation of
114 a technical proposal including conceptual design for the project. Phase III shall be the
115 proposal of the construction cost.

116 8. The division shall review the submissions of the proposals and assign points to
117 each proposal in accordance with this section and as set out in the instructions of the
118 request for proposal.

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

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

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

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

127 (4) The names and qualifications of the primary design consultants and the
128 primary trade contractors with whom the design-builder proposes to subcontract or joint
129 venture. The design-builder shall not replace an identified contractor, subcontractor,
130 design consultant, or subconsultant without the written approval of the division.

131 10. The division shall evaluate the qualifications of all the design-builders who
132 submitted proposals in accordance with the instructions of the request for proposal.
133 Architectural and engineering services on the project shall be evaluated in accordance with
134 the requirements of sections 8.285 and 8.291. Qualified design-builders selected by the
135 evaluation team may proceed to phase II of the selection process. Design-builders lacking
136 the necessary qualifications to perform the work shall be disqualified and shall not proceed
137 to phase II of the process. This process of short listing shall narrow the number of
138 qualified design-builders to not more than five and no fewer than two. Under no
139 circumstances shall price or fees be a part of the prequalification criteria. Design-builders
140 may be interviewed in either phase I or phase II of the process. Points assigned in phase
141 I of the evaluation process shall not carry forward to phase II of the process. All qualified
142 design-builders shall be ranked on points given in phases II and III only.

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

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

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

149 **(1) The division shall invite the top qualified design-builders to participate in phase**
150 **II of the process;**

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

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

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

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

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

164 **14. Phase III shall be conducted as follows:**

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

168 **(2) Cost proposals shall be submitted in accordance with the instructions of the**
169 **request for proposal. The division shall reject any proposal that is not submitted on time.**
170 **Phase III shall account for not less than forty percent of the total point score as specified**
171 **in the request for proposal;**

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

176 **(4) Cost proposals shall be opened at the time and place specified in the request for**
177 **proposal and shall be made publicly available. At the same time and place, the evaluation**
178 **team shall make public its scoring of phase II. Cost proposals shall be evaluated in**
179 **accordance with the requirements of the request for proposal. In evaluating the cost**
180 **proposals, the lowest responsive bidder shall be awarded the total number of points**

181 assigned to be awarded in phase III. For all other bidders, cost points shall be calculated
182 by reducing the maximum points available in phase III by at least one percent for each
183 percentage point by which the bidder exceeds the lowest bid and the points assigned shall
184 be added to the points assigned for phase II for each design-builder;

185 (5) If the division determines that it is not in the best interest of the division to
186 proceed with the project pursuant to the proposal offered by the design-builder with the
187 highest total number of points, the division shall reject all proposals. In this event, all
188 qualified and responsive design-builders with lower point totals shall receive a stipend and
189 the responsive design-builder with the highest total number of points shall receive an
190 amount equal to two times the stipend. If the division decides to award the project, the
191 responsive design-builder with the highest number of points shall be awarded the
192 contract; and

193 (6) If all proposals are rejected, the Division may solicit new proposals using
194 different design criteria, budget constraints, or qualifications.

195 15. As an inducement to qualified design-builders, the division shall pay a
196 reasonable stipend, the amount of which shall be established in the request for proposal,
197 to each prequalified design-builder whose proposal is responsive but not accepted. Such
198 stipend shall be no less than one-half of one percent of the total project budget. Upon
199 payment of the stipend to any unsuccessful design-builder, the division shall acquire a
200 nonexclusive right to use the design submitted by the design-builder, and the
201 design-builder shall have no further liability for the use of the design by the division in any
202 manner. If the design-builder desires to retain all rights and interest in the design
203 proposed, the design-builder shall forfeit the stipend.

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

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

214 18. Under section 327.465, any design-builder that enters into a design-build
215 contract with the division is exempt from the requirement that such person or entity hold
216 a license or that such corporation hold a certificate of authority if the architectural,

217 **engineering, or land-surveying services to be performed under the design-build contract**
218 **are performed through subcontracts or joint ventures with properly licensed or authorized**
219 **persons or entities and not performed by the design-builder or its own employees.**

[34.057.] **8.960.** 1. Unless contrary to any federal funding requirements or unless funds
2 from a state grant are not timely received by the contracting public municipality but
3 notwithstanding any other law to the contrary, all public works contracts made and awarded by
4 the appropriate officer, board or agency of the state or of a political subdivision of the state or
5 of any district therein, including any municipality, county and any board referred to as the public
6 owner, for construction, reconstruction or alteration of any public works project, shall provide
7 for prompt payment by the public owner to the contractor, and any professional engineer,
8 architect, landscape architect, or land surveyor, as well as prompt payment by the contractor to
9 the subcontractor and material supplier in accordance with the following:

10 (1) A public owner shall make progress payments to the contractor and any professional
11 engineer, architect, landscape architect, or land surveyor on at least a monthly basis as the work
12 progresses, or, on a lump sum basis according to the terms of the lump sum contract. Except in
13 the case of lump sum contracts, payments shall be based upon estimates prepared at least
14 monthly of work performed and material delivered, as determined by the project architect or
15 engineer. Retainage withheld on any construction contract or subcontract for public works
16 projects shall not exceed five percent of the value of the contract or subcontract. If the contractor
17 is not required to obtain a bond under section 107.170 because the cost of the public works
18 contract is not estimated to exceed fifty thousand dollars, the public owner may withhold
19 retainage on the public works project in an amount not to exceed ten percent of the value of the
20 contract or subcontract. The public owner shall pay the contractor the amount due, less a
21 retainage, within thirty days following the latter of the following:

22 (a) The date of delivery of materials or construction services purchased;

23 (b) The date, as designated by the public owner, upon which the invoice is duly delivered
24 to the person or place designated by the public owner; or

25 (c) In those instances in which the contractor approves the public owner's estimate, the
26 date upon which such notice of approval is duly delivered to the person or place designated by
27 the public owner;

28 (2) Payments shall be considered received within the context of this section when they
29 are duly posted with the United States Postal Service or other agreed upon delivery service or
30 when they are hand-delivered to an authorized person or place as agreed to by the contracting
31 parties;

32 (3) If, in the discretion of the owner and the project architect or engineer and the
33 contractor, it is determined that a subcontractor's performance has been completed and the

34 subcontractor can be released prior to substantial completion of the public works contract
35 without risk to the public owner, the contractor shall request such adjustment in retainage, if any,
36 from the public owner as necessary to enable the contractor to pay the subcontractor in full. The
37 public owner may reduce or eliminate retainage on any contract payment if, in the public owner's
38 opinion, the work is proceeding satisfactorily. If retainage is released and there are any
39 remaining minor items to be completed, an amount equal to one hundred fifty percent of the
40 value of each item as determined by the public owner's duly authorized representatives shall be
41 withheld until such item or items are completed;

42 (4) The public owner shall pay at least ninety-eight percent of the retainage, less any
43 offsets or deductions authorized in the contract or otherwise authorized by law, to the contractor.
44 The contractor shall pay the subcontractor or supplier after substantial completion of the contract
45 work and acceptance by the public owner's authorized contract representative, or as may
46 otherwise be provided by the contract specifications for state highway, road or bridge projects
47 administered by the state highways and transportation commission. Such payment shall be made
48 within thirty days after acceptance, and the invoice and all other appropriate documentation and
49 certifications in complete and acceptable form are provided, as may be required by the contract
50 documents. If the public owner or the owner's representative determines the work is not
51 substantially completed and accepted, then the owner or the owner's representative shall provide
52 a written explanation of why the work is not considered substantially completed and accepted
53 within fourteen calendar days to the contractor, who shall then provide such notice to the
54 subcontractor or suppliers responsible for such work. If such written explanation is not given
55 by the public body, the public body shall pay at least ninety-eight percent of the retainage within
56 thirty calendar days. If at that time there are any remaining minor items to be completed, an
57 amount equal to one hundred fifty percent of the value of each item as determined by the public
58 owner's representative shall be withheld until such items are completed;

59 (5) All estimates or invoices for supplies and services purchased, approved and
60 processed, or final payments, shall be paid promptly and shall be subject to late payment charges
61 provided in this section. Except as provided in subsection 4 of this section, if the contractor has
62 not been paid within thirty days as set forth in subdivision (1) of subsection 1 of this section, the
63 contracting agency shall pay the contractor, in addition to the payment due him, interest at the
64 rate of one and one-half percent per month calculated from the expiration of the thirty-day period
65 until fully paid;

66 (6) When a contractor receives any payment, the contractor shall pay each subcontractor
67 and material supplier in proportion to the work completed by each subcontractor and material
68 supplier his application less any retention not to exceed five percent. If the contractor receives
69 less than the full payment due under the public construction contract, the contractor shall be

70 obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors
71 and material suppliers each receiving a prorated portion based on the amount of payment. When,
72 however, the public owner does not release the full payment due under the contract because there
73 are specific areas of work or materials he is rejecting or because he has otherwise determined
74 such areas are not suitable for payment then those specific subcontractors or suppliers involved
75 shall not be paid for that portion of the work rejected or deemed not suitable for payment;
76 provided the public owner or the owner's representative gives a written explanation to the
77 contractor, subcontractor, or supplier involved as to why the work or supplies were rejected or
78 deemed not suitable for payment, and all other subcontractors and suppliers shall be paid in full;

79 (7) If the contractor, without reasonable cause, fails to make any payment to his
80 subcontractors and material suppliers within fifteen days after receipt of payment under the
81 public construction contract, the contractor shall pay to his subcontractors and material suppliers,
82 in addition to the payment due them, interest in the amount of one and one-half percent per
83 month, calculated from the expiration of the fifteen-day period until fully paid. This subdivision
84 shall also apply to any payments made by subcontractors and material suppliers to their
85 subcontractors and material suppliers and to all payments made to lower tier subcontractors and
86 material suppliers throughout the contracting chain;

87 (8) The public owner shall make final payment of all moneys owed to the contractor,
88 including any retainage withheld under subdivision (4) of this subsection, less any offsets or
89 deductions authorized in the contract or otherwise authorized by law, within thirty days of the
90 due date. Final payment shall be considered due upon the earliest of the following events:

91 (a) Completion of the project and filing with the owner of all required documentation
92 and certifications, in complete and acceptable form, in accordance with the terms and conditions
93 of the contract;

94 (b) The project is certified by the architect or engineer authorized to make such
95 certification on behalf of the owner as having been completed, including the filing of all
96 documentation and certifications required by the contract, in complete and acceptable form; or

97 (c) The project is certified by the contracting authority as having been completed,
98 including the filing of all documentation and certifications required by the contract, in complete
99 and acceptable form.

100 2. Nothing in this section shall prevent the contractor or subcontractor, at the time of
101 application or certification to the public owner or contractor, from withholding such applications
102 or certifications to the owner or contractor for payment to the subcontractor or material supplier.
103 Amounts intended to be withheld shall not be included in such applications or certifications to
104 the public owner or contractor. Reasons for withholding such applications or certifications shall
105 include, but not be limited to, the following: unsatisfactory job progress; defective construction

106 work or material not remedied; disputed work; failure to comply with other material provisions
107 of the contract; third-party claims filed or reasonable evidence that a claim will be filed; failure
108 of the subcontractor to make timely payments for labor, equipment and materials; damage to a
109 contractor or another subcontractor or material supplier; reasonable evidence that the contract
110 cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for
111 retention, not to exceed the initial percentage retained by the owner.

112 3. Should the contractor determine, after application or certification has been made and
113 after payment has been received from the public owner, or after payment has been received by
114 a contractor based upon the public owner's estimate of materials in place and work performed
115 as provided by contract, that all or a portion of the moneys needs to be withheld from a specific
116 subcontractor or material supplier for any of the reasons enumerated in this section, and such
117 moneys are withheld from such subcontractor or material supplier, then such undistributed
118 amounts shall be specifically identified in writing and deducted from the next application or
119 certification made to the public owner or from the next estimate by the public owner of payment
120 due the contractor, until a resolution of the matter has been achieved. Disputes shall be resolved
121 in accordance with the terms of the contract documents. Upon such resolution the amounts
122 withheld by the contractor from the subcontractor or material supplier shall be included in the
123 next application or certification made to the public owner or the next estimate by the public
124 owner and shall be paid promptly in accordance with the provisions of this section. This
125 subsection shall also apply to applications or certifications made by subcontractors or material
126 suppliers to the contractor and throughout the various tiers of the contracting chain.

127 4. The contracts which provide for payments to the contractor based upon the public
128 owner's estimate of materials in place and work performed rather than applications or
129 certifications submitted by the contractor, the public owner shall pay the contractor within thirty
130 days following the date upon which the estimate is required by contract to be completed by the
131 public owner, the amount due less a retainage not to exceed five percent. All such estimates by
132 the public owner shall be paid promptly and shall be subject to late payment charges as provided
133 in this subsection. After the thirtieth day following the date upon which the estimate is required
134 by contract to be completed by the public owner, the contracting agency shall pay the contractor,
135 in addition to the payment due him, interest at a rate of one and one-half percent per month
136 calculated from the expiration of the thirty-day period until fully paid.

137 5. The public owner shall pay or cause to be paid to any professional engineer, architect,
138 landscape architect, or land surveyor the amount due within thirty days following the receipt of
139 an invoice prepared and submitted in accordance with the contract terms. In addition to the
140 payment due, the contracting agency shall pay interest at the rate of one and one-half percent per
141 month calculated from the expiration of the thirty-day period until fully paid.

142 6. Nothing in this section shall prevent the owner from withholding payment or final
143 payment from the contractor, or a subcontractor or material supplier. Reasons for withholding
144 payment or final payment shall include, but not be limited to, the following: liquidated damages;
145 unsatisfactory job progress; defective construction work or material not remedied; disputed
146 work; failure to comply with any material provision of the contract; third party claims filed or
147 reasonable evidence that a claim will be filed; failure to make timely payments for labor,
148 equipment or materials; damage to a contractor, subcontractor or material supplier; reasonable
149 evidence that a subcontractor or material supplier cannot be fully compensated under its contract
150 with the contractor for the unpaid balance of the contract sum; or citation by the enforcing
151 authority for acts of the contractor or subcontractor which do not comply with any material
152 provision of the contract and which result in a violation of any federal, state or local law,
153 regulation or ordinance applicable to that project causing additional costs or damages to the
154 owner.

155 7. Nothing in this section shall be construed to require direct payment by a public owner
156 to a subcontractor or supplier, except in the case of the default, as determined by a court, of the
157 contractor on the contract with the public owner where no performance or payment bond is
158 required or where the surety fails to execute its duties, as determined by a court.

159 8. Notwithstanding any other provisions in this section to the contrary, no late payment
160 interest shall be due and owing for payments which are withheld in good faith for reasonable
161 cause pursuant to subsections 2, 5, and 6 of this section. If it is determined by a court of
162 competent jurisdiction that a payment which was withheld pursuant to subsections 2, 5, and 6
163 of this section was not withheld in good faith for reasonable cause, the court may impose interest
164 at the rate of one and one-half percent per month calculated from the date of the invoice and may,
165 in its discretion, award reasonable attorney fees to the prevailing party. In any civil action or part
166 of a civil action brought pursuant to this section, if a court determines after a hearing for such
167 purpose that the cause was initiated, or a defense was asserted, or a motion was filed, or any
168 proceeding therein was done frivolously and in bad faith, the court shall require the party who
169 initiated such cause, asserted such defense, filed such motion, or caused such proceeding to be
170 had to pay the other party named in such action the amount of the costs attributable thereto and
171 reasonable expenses incurred by such party, including reasonable attorney fees.

[34.058.] **8.962.** 1. As used in this section, the term "public works contract" means a
2 contract of the state, county, city and other political subdivisions of the state, except the Missouri
3 transportation department, for the construction, alteration, repair, or maintenance of any building,
4 structure, highway, bridge, viaduct, pipeline, public works, or any other works dealing with
5 construction, which shall include, but need not be limited to, moving, demolition, or excavation
6 performed in conjunction with such work.

7 2. Any clause in a public works contract that purports to waive, release, or extinguish
8 the rights of a contractor to recover costs or damages, or obtain an equitable adjustment, for
9 delays in performing such contract, if such delay is caused in whole, or in part, by acts or
10 omissions within the control of the contracting public entity or persons acting on behalf thereof,
11 is against public policy and is void and unenforceable.

12 3. Subsection 2 of this section is not intended to render void any contract provision of
13 a public works contract that:

14 (1) Precludes a contractor from recovering that portion of delay costs caused by the acts
15 or omissions of the contractor or its agents;

16 (2) Requires notice of any delay by the party responsible for such delay;

17 (3) Provides for reasonable liquidated damages; or

18 (4) Provides for arbitration or any other procedure designed to settle contract disputes.

~~[34.203.]~~ **8.964.** The provisions of sections ~~[34.203]~~ **8.964** to ~~[34.216]~~ **8.974** shall be
2 known and may be cited as the "Fairness in Public Construction Act".

~~[34.206.]~~ **8.966.** The purpose of sections ~~[34.203]~~ **8.964** to ~~[34.216]~~ **8.974** is to fulfill the
2 state's proprietary objectives in maintaining and promoting the economical, nondiscriminatory,
3 and efficient expenditures of public funds in connection with publicly funded or assisted
4 construction projects. Nothing in sections ~~[34.203]~~ **8.964** to ~~[34.216]~~ **8.974** shall prohibit
5 employers or other parties covered by the National Labor Relations Act from entering into
6 agreements or engaging in any other activity arguably protected by law, nor shall any aspect of
7 sections ~~[34.203]~~ **8.964** to ~~[34.216]~~ **8.974** be interpreted in such a way as to interfere with the
8 labor relations of parties covered by the National Labor Relations Act.

~~[34.209.]~~ **8.968.** 1. The state, any agency of the state, any political subdivision of the
2 state, or any instrumentality thereof, when engaged in procuring or letting contracts for
3 construction, repair, remodeling, or demolition of a facility shall ensure that bid specification,
4 project agreements, and other controlling documents entered into, required, or subject to
5 approval by the state, agency, political subdivision, or instrumentality do not:

6 (1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or
7 adhere to agreements with one or more labor organizations on the same or related projects; or

8 (2) Discriminate against, encourage, or give preferential treatment to bidders, offerors,
9 contractors, or subcontractors for:

10 (a) Entering or refusing to enter agreements with one or more labor organizations on the
11 same or related construction projects; or

12 (b) Remaining or refusing to remain signatory with one or more labor organizations on
13 the same or related construction projects.

14 2. Nothing in this section shall be construed to prohibit the state, any agency of the state,
15 any political subdivision of the state, or any instrumentality thereof from requiring bidders,
16 offerors, contractors, or subcontractors, as a condition of receiving work or submitting a bid, to
17 test its workers and employees for the presence of illegal drugs.

~~[34.212.]~~ **8.970.** 1. The state, any agency of the state, any political subdivision of the
2 state, or any instrumentality thereof shall not issue or award grants, tax abatements, or tax credits
3 or enter into cooperative agreements for construction projects or for the improvement,
4 maintenance, or renovation of real property or fixtures, a condition of which requires that bid
5 specifications, project agreements, or other controlling documents pertaining to the grant, tax
6 abatement, tax credit, or cooperative agreement contain any of the elements specified in section
7 ~~[34.209]~~ **8.968.**

8 2. The state, any agency of the state, any political subdivision, or any instrumentality
9 thereof shall exercise such authority as may be required to preclude a grant, tax abatement, or
10 tax credit recipient or party to a cooperative agreement from imposing any of the elements
11 specified in section ~~[34.209]~~ **8.964** in connection with any grant or cooperative agreement
12 awarded or entered into. Nothing in sections ~~[34.203]~~ **8.964** to ~~[34.217]~~ **8.974** shall prohibit
13 contractors or subcontractors from voluntarily entering into agreements described in section
14 ~~[34.209]~~ **8.964.**

~~[34.217.]~~ **8.972.** Notwithstanding the provisions of section 1.140, the provisions of
2 sections 290.095 and 290.250 and sections ~~[34.203]~~ **8.964** to ~~[34.216]~~ **8.974** shall not be
3 severable. In the event a court of competent jurisdiction rules that any part of this act is
4 unenforceable, the entire act shall be rendered null and void.

~~[34.218.]~~ **8.974.** 1. Any entity which violates the provisions of sections ~~[34.203]~~ **8.964**
2 to ~~[34.217]~~ **8.974** shall be liable to the person affected for such equitable relief as may be
3 appropriate, including reasonable attorney's fees.

4 2. Any entity which violates the provisions of sections 34.203 to 34.217 shall not be
5 eligible for any state funding or tax credits issued by the state for two years.

6 3. The prosecuting attorney or circuit attorney with jurisdiction over the location where
7 a violation of sections ~~[34.203]~~ **8.964** to ~~[34.217]~~ **8.974** occurs, or the attorney general of this
8 state, shall investigate complaints of violation of such sections, and use all means at their
9 command to ensure the effective enforcement of this section.

34.055. 1. Except as otherwise provided in section ~~[34.057]~~ **8.960**, all invoices for
2 supplies and services purchased by the state, duly approved and processed, shall be subject to
3 interest charges or late payment charges as provided in this section.

4 2. After the forty-fifth day following the later of the date of delivery of the supplies and
5 services or the date upon which the invoice is duly approved and processed, interest retroactive

6 to the thirtieth day shall be paid on any unpaid balance, except balances for services provided
7 by a gas corporation, electrical corporation, water corporation, or sewer corporation which has
8 received authorization from the public service commission to impose late payment charges on
9 delinquent utility bills, upon application of the vendor thereof. The rate of such interest shall be
10 three percentage points above the average predominant prime rate quoted by commercial banks
11 to large businesses, as determined by the Board of Governors of the Federal Reserve System.

12 3. The state shall be liable for late payment charges on any delinquent bill for services
13 purchased by the state from a gas corporation, electrical corporation, water corporation, or sewer
14 corporation which has received authorization from the public service commission to impose late
15 payment charges on delinquent utility bills. The rate of such late payment charges shall be as
16 established for each such corporation by order of the public service commission, but bills
17 rendered to the state shall not be considered delinquent until thirty days after rendition of the bill
18 by the corporation.

19 4. Any such interest charges or late payment charges shall be paid from appropriations
20 which were made for the fiscal year in which the supplies or services were delivered to the
21 respective departments purchasing such supplies or services. The commissioner of
22 administration shall be responsible for the timely implementation of this section and all officers,
23 departments, institutions and agencies of state government shall fully cooperate with the
24 commissioner of administration in the implementation of this section. No late payment penalty
25 shall be assessed against, nor payable by, the state unless pursuant to the provisions of this
26 section.

27 5. Notwithstanding any other provision of this section, recipients of funds from the
28 low-income energy assistance program shall be exempt from interest charges imposed by such
29 section for the duration of the recipient's participation in the program.

34.100. The commissioner of administration may, when in the commissioner's best
2 judgment it is in the best interests of the state, delegate the commissioner's procurement authority
3 pursuant to this chapter to an individual department; provided, however, that each instance of
4 single feasible source purchasing authority [~~five~~] **ten** thousand dollars under section 34.044 must
5 be specifically delegated by the commissioner. The delegation may allow departments to
6 negotiate in accordance with section 34.042 the purchase of services for patients, residents or
7 clients with funds appropriated for this purpose. In accepting this delegated authority the
8 department acknowledges its ability to, and agrees to, fulfill all of the requirements of this
9 chapter in making purchases and entering into contracts and keeping records. No claim for
10 payment based upon any purchase under this section shall be certified by the commissioner
11 unless accompanied by such documentation of compliance with the provisions of this chapter

- 12 as the commissioner may require. Any department that fails to fulfill all such requirements may
- 13 have its delegated authority rescinded by the commissioner of administration.

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