

SECOND REGULAR SESSION

HOUSE BILL NO. 1894

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KORMAN.

5356H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 67, RSMo, by adding thereto three new sections relating to design-build contracts.

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

Section A. Chapter 67, RSMo, is amended by adding thereto three new sections, to be known as sections 67.5050, 67.5060, and 67.5070, to read as follows:

67.5050. 1. As used in this section, the following terms mean:

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

(2) **"Construction manager-at-risk"**, a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the construction, rehabilitation, alteration, or repair of a project at the contracted price as a general contractor and provides consultation to a political subdivision regarding construction during and after the design of the project.

2. Any political subdivision may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the political subdivision shall follow the procedures prescribed by this section.

3. Before or concurrently with selecting a construction manager-at-risk, the political subdivision shall select or designate an engineer or architect who shall prepare the construction documents for the project and who shall comply with all state laws, as applicable. If the engineer or architect is not a full-time employee of the political subdivision, the political subdivision shall select the engineer or architect on the basis of

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 demonstrated competence and qualifications as provided by sections 8.285 to 8.291. The
19 political subdivision's engineer or architect for a project may not serve, alone or in
20 combination with another, as the construction manager-at-risk. This subsection does not
21 prohibit a political subdivision's engineer or architect from providing customary
22 construction phase services under the engineer's or architect's original professional service
23 agreement in accordance with applicable licensing laws.

24 4. The political subdivision may provide or contract for, independently of the
25 construction manager-at-risk, inspection services, testing of construction materials,
26 engineering, and verification of testing services necessary for acceptance of the project by
27 the political subdivision.

28 5. The political subdivision shall select the construction manager-at-risk in a two-
29 step process. The political subdivision shall prepare a request for qualifications, for the
30 case of the first step of the two-step process, that includes general information on the
31 project site, project scope, schedule, selection criteria, and the time and place for receipt
32 of proposals or qualifications, as applicable, and other information that may assist the
33 political subdivision in its selection of a construction manager-at-risk. The political
34 subdivision shall state the selection criteria in the request for proposals or qualifications,
35 as applicable. The selection criteria may include the construction manager's experience,
36 past performance, safety record, proposed personnel and methodology, and other
37 appropriate factors that demonstrate the capability of the construction manager-at-risk.
38 The political subdivision shall not request fees or prices in step one. In step two, the
39 political subdivision may request that five or fewer construction managers, selected solely
40 on the basis of qualifications, provide additional information, including the construction
41 manager-at-risk's proposed fee and its price for fulfilling the general conditions.
42 Qualifications shall account for a minimum of forty percent of the evaluation. Cost shall
43 account for a maximum of sixty percent of the evaluation.

44 6. The political subdivision shall publish the request for proposal or qualifications
45 in a manner prescribed by the political subdivision.

46 7. For each step, the political subdivision shall receive, publicly open, and read
47 aloud the names of the construction managers. Within forty-five days after the date of
48 opening the proposals or qualification submissions, the political subdivision or its
49 representative shall evaluate and rank each proposal or qualification submission submitted
50 in relation to the criteria set forth in the request for proposals or request for qualifications.
51 The political subdivision shall interview at least two of the top qualified offerors as part
52 of the final selection.

53 **8. The political subdivision or its representative shall select the construction**
54 **manager that submits the proposal that offers the best value for the political subdivision**
55 **based on the published selection criteria and on its ranking evaluation. The political**
56 **subdivision or its representative shall first attempt to negotiate a contract with the selected**
57 **construction manager. If the political subdivision or its representative is unable to**
58 **negotiate a satisfactory contract with the selected construction manager, the political**
59 **subdivision or its representative shall, formally and in writing, end negotiations with that**
60 **construction manager and proceed to negotiate with the next construction manager in the**
61 **order of the selection ranking until a contract is reached or negotiations with all ranked**
62 **construction managers end.**

63 **9. A construction manager-at-risk shall publicly advertise, in the manner**
64 **prescribed by chapter 50, and receive bids or proposals from trade contractors or**
65 **subcontractors for the performance of all major elements of the work other than the minor**
66 **work that may be included in the general conditions. A construction manager-at-risk may**
67 **seek to perform portions of the work itself if the construction manager-at-risk submits its**
68 **sealed bid or sealed proposal for those portions of the work in the same manner as all other**
69 **trade contractors or subcontractors, and if the political subdivision determines that the**
70 **construction manager-at-risk's bid or proposal provides the best value for the political**
71 **subdivision. The political subdivision shall have the authority to restrict the construction**
72 **manager-at-risk from submitting bids to perform portions of the work.**

73 **10. The construction manager-at-risk and the political subdivision or its**
74 **representative shall review all trade contractor or subcontractor bids or proposals in a**
75 **manner that does not disclose the contents of the bid or proposal during the selection**
76 **process to a person not employed by the construction manager-at-risk, engineer, architect,**
77 **or political subdivision involved with the project. All bids or proposals shall be made**
78 **public at least four business days prior to the award of the contract but after all bids are**
79 **evaluated and clarified.**

80 **11. If the construction manager-at-risk reviews, evaluates, and recommends to the**
81 **political subdivision a bid or proposal from a trade contractor or subcontractor but the**
82 **political subdivision requires another bid or proposal to be accepted, the political**
83 **subdivision may compensate the construction manager-at-risk by a change in price, time,**
84 **or guaranteed maximum cost for any additional cost and risk that the construction**
85 **manager-at-risk may incur because of the political subdivision's requirement that another**
86 **bid or proposal be accepted.**

87 **12. If a selected trade contractor or subcontractor defaults in the performance of**
88 **its work or fails to execute a subcontract after being selected in accordance with this**

89 section, the construction manager-at-risk may itself, without advertising, fulfill the contract
90 requirements or select a replacement trade contractor or subcontractor to fulfill the
91 contract requirements. If a fixed contract amount or guaranteed maximum price has not
92 been determined at the time the contract is awarded, the penal sums of the performance
93 and payment bonds delivered to the political subdivision shall each be in an amount equal
94 to the project budget, as set forth in the request for qualifications. The construction
95 manager-at-risk shall deliver the bonds not later than the tenth day after the date the
96 construction manager-at-risk executes the contract unless the construction manager-at-risk
97 furnishes a bid bond or other financial security acceptable to the political subdivision to
98 ensure that the construction manager-at-risk will furnish the required performance and
99 payment bonds if a guaranteed maximum price is established.

100 13. The provisions of this section shall not apply to any metropolitan sewer district
101 established under article VI, section 30(a) of the Constitution of Missouri, or charter city
102 or charter county governed by home rule under article VI, section 18 or 19 of the
103 Constitution of Missouri.

104 14. (1) Civil works projects such as roads, streets, bridges, utilities, water supply
105 projects, water plants, wastewater plants, water distribution and wastewater conveyance
106 facilities, airport runways and taxiways, storm drainage and flood control projects, or
107 transit projects commonly designed by professional engineers shall be limited to those
108 projects in excess of two million dollars.

109 (2) Non-civil works projects such as buildings, site improvements, and other
110 structures, habitable or not, commonly designed by architects shall be limited to those
111 projects in excess of seven million dollars.

112 15. Notwithstanding the provisions of section 23.253 to the contrary, the provisions
113 of this section shall expire September 1, 2025.

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

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

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

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

12 (a) Civil works projects, such as roads, streets, bridges, utilities, water supply
13 projects, water plants, wastewater plants, water distribution and wastewater conveyance
14 facilities, airport runways and taxiways, storm drainage and flood control projects, or
15 transit projects commonly designed by professional engineers in excess of two million
16 dollars; and

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

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

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

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

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

- 48 (a) Within the practice of architecture as defined in section 327.091, or within the
49 practice of professional engineering as defined in section 327.181; or
- 50 (b) Performed by a licensed or authorized architect or professional engineer in
51 connection with the architect's or professional engineer's employment or practice;
- 52 (8) "Proposal", an offer in response to a request for proposals by a design-builder
53 to enter into a design-build contract for a design-build project under this section;
- 54 (9) "Qualification-based selection", the selection process described in sections 8.285
55 to 8.291;
- 56 (10) "Request for proposal", the document by which the political subdivision
57 solicits proposals for a design-build contract;
- 58 (11) "Stipend", an amount paid to the unsuccessful but responsive, short-listed
59 design-builders to defray the cost of participating in phase II of the qualification-based
60 selection process described in this section.
- 61 2. In using a design-build contract, the political subdivision shall determine the
62 scope and level of detail required to permit qualified persons to submit proposals in
63 accordance with the request for proposals given the nature of the project.
- 64 3. A design criteria consultant shall be employed or retained by the political
65 subdivision to assist in preparation of the request for proposal, perform periodic site visits,
66 prepare progress reports, review and approve progress and final pay applications of the
67 design-builder, review shop drawings and submissions, provide input in disputes, help
68 interpret the construction documents, perform inspections upon substantial and final
69 completion, assist in warranty inspections, and provide any other professional service
70 assisting with the project administration. The design criteria consultant may also evaluate
71 construction as to the adherence of the design criteria. The consultant shall be selected and
72 its contract negotiated in compliance with sections 8.285 to 8.291 unless the consultant is
73 a direct employee of the political subdivision.
- 74 4. Notice of requests for proposals shall be advertised in accordance with section
75 8.250 or by a virtual notice procedure that notifies interested parties for at least twenty
76 various purchases, design contracts, construction contracts, or other contracts each year
77 for the political subdivision. The political subdivision shall publish a notice of a request
78 for proposal with a description of the project, the procedures for submission, and the
79 selection criteria to be used.
- 80 5. The political subdivision shall establish in the request for proposal a time, place,
81 and other specific instructions for the receipt of proposals. Proposals not submitted in
82 strict accordance with the instructions shall be subject to rejection.

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

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

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

88 (3) The design criteria package;

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

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

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

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

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

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

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

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

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

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

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

116 (4) The names and qualifications of the primary design consultants and the
117 primary trade contractors with whom the design-builder proposes to subcontract or joint
118 venture. The design-builder shall not replace an identified contractor, subcontractor,

119 design consultant, or subconsultant without the written approval of the political
120 subdivision; and

121 (5) The approximate percentage of ownership by design professionals of the legal
122 entity of the design-builder or legal entity that contracts with the design-builder.

123 10. The political subdivision shall evaluate the qualifications of all the design-
124 builders who submitted proposals in accordance with the instructions of the request for
125 proposal. Architectural and engineering services on the project shall be evaluated in
126 accordance with the requirements of sections 8.285 and 8.291. Qualified design-builders
127 selected by the evaluation team may proceed to phase II of the selection process. Design-
128 builders lacking the necessary qualifications to perform the work shall be disqualified and
129 shall not proceed to phase II of the process. This process of short-listing shall narrow the
130 number of qualified design-builders to not more than five nor fewer than two. Under no
131 circumstances shall price or fees be a part of the prequalification criteria. Points assigned
132 in phase I of the evaluation process shall not carry forward to phase II of the process. All
133 qualified design-builders shall be ranked on points given in phases II and III only.

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

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

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

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

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

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

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

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

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

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

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

161 **(2) Cost proposals shall be submitted in accordance with the instructions of the**
162 **request for proposal. The political subdivision shall reject any proposal that is not**
163 **submitted on time. Phase III shall account for not less than forty percent of the total point**
164 **score as specified in the request for proposal;**

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

170 **(4) Cost proposals shall be opened and read aloud at the time and place specified**
171 **in the request for proposal. At the same time and place, the evaluation team shall make**
172 **public its scoring of phase II. Cost proposals shall be evaluated in accordance with the**
173 **requirements of the request for proposal. In evaluating the cost proposals, the lowest**
174 **responsive bidder shall be awarded the total number of points assigned to be awarded in**
175 **phase III. For all other bidders, cost points shall be calculated by reducing the maximum**
176 **points available in phase III by two percent or more for each percentage point by which**
177 **the bidder exceeds the lowest bid and the points assigned shall be added to the points**
178 **assigned for phase II for each design-builder;**

179 **(5) If the political subdivision determines that it is not in the best interest of the**
180 **political subdivision to proceed with the project under the proposal offered by the design-**
181 **builder with the highest total number of points, the political subdivision shall reject all**
182 **proposals. In this event, all qualified and responsive design-builders with lower point**
183 **totals shall receive a stipend and the responsive design-builder with the highest total**
184 **number of points shall receive an amount equal to two times the stipend. If the political**
185 **subdivision decides to award the project, the responsive design-builder with the highest**
186 **number of points shall be awarded the contract; and**

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

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

198 **16. The payment bond requirements of section 107.170 shall apply to the design-**
199 **build project. All persons furnishing design services shall be deemed to be covered by the**
200 **payment bond the same as any person furnishing labor and materials; however, the**
201 **performance bond for the design-builder does not need to cover the design services as long**
202 **as the design-builder or its subcontractors providing design services carry professional**
203 **liability insurance in an amount established by the political subdivision in the request for**
204 **proposals.**

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

209 **18. Under section 327.465, any design-builder that enters into a design-build**
210 **contract with a political subdivision is exempt from the requirement that such person or**
211 **entity hold a license or that such corporation hold a certificate of authority if the**
212 **architectural, engineering, or land-surveying services to be performed under the design-**
213 **build contract are performed through subcontracts or joint ventures with properly licensed**
214 **or authorized persons or entities and not performed by the design-builder or its own**
215 **employees.**

216 **19. The provisions of this section shall not apply to any metropolitan sewer district**
217 **established under article VI, section 30(a) of the Constitution of Missouri, or charter city**
218 **or charter county governed by home rule under article VI, section 18 or 19 of the**
219 **Constitution of Missouri.**

220 **20. The authority to use design-build and design-build contracts provided under**
221 **this section shall expire September 1, 2025.**

67.5070. 1. As used in this section, "specialty construction design" means any
2 **contract that involves the provision of engineering and construction services either directly**
3 **by a party to the contract or through subcontractors retained by a party to the contract.**

4 **2. Any political subdivision may enter into a special construction design contract**
5 **for engineering, design, and construction of a wastewater or water treatment project.**

6 **3. In disbursing community development block grants under 42 U.S.C. Sections**
7 **5301 to 5321, the department of economic development shall not reject wastewater or water**
8 **treatment projects solely for utilizing specialty construction design contracts.**

9 **4. The department of natural resources shall not preclude specialty construction**
10 **design contracts from consideration for funding provided by the water and wastewater**
11 **loan fund under section 644.122.**

12 **5. A political subdivision planning a specialty construction design project shall**
13 **retain an engineer duly licensed in this state to assist in preparing any necessary bid**
14 **documents and specifications and evaluations of submissions and bids.**

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