

SECOND REGULAR SESSION

# SENATE BILL NO. 595

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4963S.01I

## AN ACT

To amend chapter 67, RSMo, by adding thereto two new sections relating to construction management.

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

Section A. Chapter 67, RSMo, is amended by adding thereto two new sections, to be known as sections 67.5050 and 67.5060, 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

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

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

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

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

58 7. For each step, the political subdivision shall receive, publicly

59 open, and read aloud the names of the construction managers. Within  
60 forty-five days after the date of opening the proposals or qualification  
61 submissions, the political subdivision or its representative shall  
62 evaluate and rank each proposal or qualification submission submitted  
63 in relation to the criteria set forth in the request for proposals or  
64 request for qualifications. The political subdivision shall interview at  
65 least two of the top qualified offerors as part of the final selection.

66 8. The political subdivision or its representative shall select the  
67 construction manager that submits the proposal that offers the best  
68 value for the political subdivision based on the published selection  
69 criteria and on its ranking evaluation. The political subdivision or its  
70 representative shall first attempt to negotiate a contract with the  
71 selected construction manager. If the political subdivision or its  
72 representative is unable to negotiate a satisfactory contract with the  
73 selected construction manager, the political subdivision or its  
74 representative shall, formally and in writing, end negotiations with  
75 that construction manager and proceed to negotiate with the next  
76 construction manager in the order of the selection ranking until a  
77 contract is reached or negotiations with all ranked construction  
78 managers end.

79 9. A construction manager-at-risk shall publicly advertise, in the  
80 manner prescribed by chapter 50, and receive bids or proposals from  
81 trade contractors or subcontractors for the performance of all major  
82 elements of the work other than the minor work that may be included  
83 in the general conditions. A construction manager-at-risk may seek to  
84 perform portions of the work itself if the construction manager-at-risk  
85 submits its sealed bid or sealed proposal for those portions of the work  
86 in the same manner as all other trade contractors or  
87 subcontractors. All sealed bids or proposals shall be submitted at the  
88 time and location as specified in the advertisement for bids or  
89 proposals and shall be publicly opened. The political subdivision shall  
90 have the authority to restrict the construction manager-at-risk from  
91 submitting bids to perform portions of the work.

92 10. The construction manager-at-risk and the political  
93 subdivision or its representative shall review all trade contractor,  
94 subcontractor, or construction manager-at-risk bids or proposals in a  
95 manner that does not disclose the contents of the bid or proposal

96 during the selection process to a person not employed by the  
97 construction manager-at-risk, engineer, architect, or political  
98 subdivision involved with the project. If the construction  
99 manager-at-risk submitted bids or proposals, the political subdivision  
100 shall determine if the construction manager-at-risk's bid or proposal  
101 offers the best value for the political subdivision. After all proposals  
102 have been evaluated and clarified, the award of all subcontracts shall  
103 be made public.

104       11. If the construction manager-at-risk reviews, evaluates, and  
105 recommends to the political subdivision a bid or proposal from a trade  
106 contractor or subcontractor but the political subdivision requires  
107 another bid or proposal to be accepted, the political subdivision shall  
108 compensate the construction manager-at-risk by a change in price,  
109 time, or guaranteed maximum cost for any additional cost and risk that  
110 the construction manager-at-risk may incur because of the political  
111 subdivision's requirement that another bid or proposal be accepted.

112       12. If a selected trade contractor or subcontractor defaults in the  
113 performance of its work or fails to execute a subcontract after being  
114 selected in accordance with this section, the construction manager-at-  
115 risk may itself, without advertising, fulfill the contract requirements  
116 or select a replacement trade contractor or subcontractor to fulfill the  
117 contract requirements. The penal sums of the performance and  
118 payment bonds delivered to the political subdivision shall each be in  
119 an amount equal to the fixed contract amount or guaranteed maximum  
120 price. The construction manager-at-risk shall deliver the bonds not  
121 later than the tenth day after the date the fixed contract amount or  
122 guaranteed maximum price is established.

123       13. This section shall not apply to:

124       (1) Any metropolitan sewer district established under article VI,  
125 section 30(a) of the Constitution of Missouri;

126       (2) Any charter city or charter county governed by home rule  
127 under article VI, section 18 or 19 of the Constitution of Missouri that  
128 has adopted a construction manager-at-risk method via ordinance, rule  
129 or regulation.

130       14. (1) Civil works projects such as roads, streets, bridges,  
131 utilities, water supply projects, water plants, wastewater plants, water  
132 distribution and wastewater conveyance facilities, airport runways and

133 taxiways, storm drainage and flood control projects, or transit projects  
134 commonly designed by professional engineers shall be limited to those  
135 projects in excess of one million dollars.

136 (2) Non-civil works projects such as buildings, site  
137 improvements, and other structures, habitable or not, commonly  
138 designed by architects shall be limited to those projects in excess of  
139 five million dollars.

140 15. Notwithstanding the provisions of section 23.253 to the  
141 contrary, the provisions of this section shall expire September 1, 2026.

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

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

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

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

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

21 (b) Non-civil works projects, such as buildings, site  
22 improvements, and other structures, habitable or not, commonly  
23 designed by architects in excess of five million dollars;

24 (4) "Design-builder", any individual, partnership, joint venture,  
25 or corporation subject to a qualification-based selection that offers to  
26 provide or provides design services and general contracting services  
27 through a design-build contract in which services within the scope of  
28 the practice of professional architecture or engineering are performed

29 respectively by a licensed architect or licensed engineer and in which  
30 services within the scope of general contracting are performed by a  
31 general contractor or other legal entity that furnishes architecture or  
32 engineering services and construction services either directly or  
33 through subcontracts or joint ventures;

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

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

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

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

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

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

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

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

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

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

92 4. Notice of requests for proposals shall be advertised in  
93 accordance with section 8.250 or by a virtual notice procedure that  
94 notifies interested parties for at least twenty various purchases, design  
95 contracts, construction contracts, or other contracts each year for the  
96 political subdivision. The political subdivision shall publish a notice  
97 of a request for proposal with a description of the project, the  
98 procedures for submission, and the selection criteria to be used.

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

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

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

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

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

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

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

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

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

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

126           **7. The political subdivision shall solicit proposals in a three-**  
127 **stage process. Phase I shall be the solicitation of qualifications of the**  
128 **design-build team. Phase II shall be the solicitation of a technical**  
129 **proposal including conceptual design for the project. Phase III shall be**  
130 **the proposal of the construction cost.**

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

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

136           **(1) Demonstrated ability to perform projects comparable in**  
137 **design, scope, and complexity;**

138           **(2) References of owners for whom design-build projects,**  
139 **construction projects, or design projects have been performed;**



140           **(3) Qualifications of personnel who will manage the design and**  
141 **construction aspects of the project; and**

142           **(4) The names and qualifications of the primary design**  
143 **consultants and the primary trade contractors with whom the design-**  
144 **builder proposes to subcontract or joint venture. The design-builder**  
145 **may not replace an identified contractor, subcontractor, design**  
146 **consultant, or subconsultant without the written approval of the**  
147 **political subdivision.**

148           **10. The political subdivision shall evaluate the qualifications of**  
149 **all the design-builders who submitted proposals in accordance with the**  
150 **instructions of the request for proposal. Architectural and engineering**  
151 **services on the project shall be evaluated in accordance with the**  
152 **requirements of sections 8.285 and 8.291. Qualified design-builders**  
153 **selected by the evaluation team may proceed to phase II of the**  
154 **selection process. Design-builders lacking the necessary qualifications**  
155 **to perform the work shall be disqualified and shall not proceed to**  
156 **phase II of the process. This process of short listing shall narrow the**  
157 **number of qualified design-builders to not more than five nor fewer**  
158 **than two. Under no circumstances shall price or fees be a part of the**  
159 **prequalification criteria. Design-builders may be interviewed in either**  
160 **phase I or phase II of the process. Points assigned in phase I of the**  
161 **evaluation process shall not carry forward to phase II of the**  
162 **process. All qualified design-builders shall be ranked on points given**  
163 **in phases II and III only.**

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

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

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

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

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

177 in the request for proposal;

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

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

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

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

191 14. Phase III shall be conducted as follows:

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

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

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

207 (4) Cost proposals shall be opened and read aloud at the time  
208 and place specified in the request for proposal. At the same time and  
209 place, the evaluation team shall make public its scoring of phase  
210 II. Cost proposals shall be evaluated in accordance with the  
211 requirements of the request for proposal. In evaluating the cost  
212 proposals, the lowest responsive bidder shall be awarded the total  
213 number of points assigned to be awarded in phase III. For all other

214 bidders, cost points shall be calculated by reducing the maximum  
215 points available in phase III by at least one percent for each percentage  
216 point by which the bidder exceeds the lowest bid and the points  
217 assigned shall be added to the points assigned for phase II for each  
218 design-builder;

219 (5) If the political subdivision determines that it is not in the  
220 best interest of the political subdivision to proceed with the project  
221 pursuant to the proposal offered by the design-builder with the highest  
222 total number of points, the political subdivision shall reject all  
223 proposals. In this event, all qualified and responsive design-builders  
224 with lower point totals shall receive a stipend and the responsive  
225 design-builder with the highest total number of points shall receive an  
226 amount equal to two times the stipend. If the political subdivision  
227 decides to award the project, the responsive design-builder with the  
228 highest number of points shall be awarded the contract; and

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

232 15. As an inducement to qualified design-builders, the political  
233 subdivision shall pay a reasonable stipend, the amount of which shall  
234 be established in the request for proposal, to each prequalified design-  
235 builder whose proposal is responsive but not accepted. Such stipend  
236 shall be no less than one-half of one percent of the total project  
237 budget. Upon payment of the stipend to any unsuccessful design-  
238 builder, the political subdivision shall acquire a nonexclusive right to  
239 use the design submitted by the design-builder, and the design-builder  
240 shall have no further liability for the use of the design by the political  
241 subdivision in any manner. If the design-builder desires to retain all  
242 rights and interest in the design proposed, the design-builder shall  
243 forfeit the stipend.

244 16. The payment bond requirements of section 107.170 shall  
245 apply to the design-build project. All persons furnishing design  
246 services shall be deemed to be covered by the payment bond the same  
247 as any person furnishing labor and materials; however, the  
248 performance bond for the design-builder does not need to cover the  
249 design services as long as the design-builder or its design consultants  
250 providing design services carry professional liability insurance in an

251 amount established by the political subdivision in the request for  
252 proposals.

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

257       18. Under section 327.465, any design-builder that enters into a  
258 design-build contract with a political subdivision is exempt from the  
259 requirement that such person or entity hold a license or that such  
260 corporation hold a certificate of authority if the architectural,  
261 engineering, or land-surveying services to be performed under the  
262 design-build contract are performed through subcontracts or joint  
263 ventures with properly licensed or authorized persons or entities, and  
264 not performed by the design-builder or its own employees.

265       19. This section shall not apply to:

266       (1) Any metropolitan sewer district established under article VI,  
267 section 30(a) of the Constitution of Missouri; or

268       (2) Any charter city or charter county governed by home rule  
269 under article VI, section 18 or 19 of the Constitution of Missouri that  
270 has adopted a design-build process via ordinance, rule, or regulation.

271       20. The authority to use design-build and design-build contracts  
272 provided under this section shall expire September 1, 2026.

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