

SECOND REGULAR SESSION

HOUSE BILL NO. 2515

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE THOMSON.

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D. ADAM CRUMBLISS, Chief Clerk

5551L.02I

AN ACT

To amend chapter 173, RSMo, by adding thereto six new sections relating to the procurement of construction by the design-build method by a certain public higher education institution.

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

Section A. Chapter 177, RSMo, is amended by adding thereto six new sections, to be known as sections 173.1201, 173.1202, 173.1203, 173.1204, 173.1205, and 173.1206, to read as follows:

173.1201. As used in this section, the following terms shall mean:

- (1) **"Design-build"**, a project for which the design and construction services are furnished under one contract;
- (2) **"Design-build contract"**, a contract between a public higher education institution and a design-build contractor to furnish the architecture, engineering, and related design services, and the labor, materials, and other construction services required for a specific construction project;
- (3) **"Design-build contractor"**, any individual, partnership, joint venture, corporation, or other legal entity that furnishes architecture or engineering services and construction services either directly or through subcontracts;
- (4) **"Design-build project"**, the design, construction, alteration, addition, remodeling, or improvement of any student residence buildings under contract with a public higher education institution;

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.

14 (5) "Design criteria package", performance-oriented specifications for the
15 design-build project sufficient to permit a design-build contractor to prepare a response
16 to the public higher education institution's request for proposals for a design-build project,
17 which may include preliminary designs for the project or portions thereof;

18 (6) "Public higher education institution", any institution whose board of regents
19 is selected under section 174.332, RSMo.

173.1202. 1. As an alternative to the requirements and procedures specified by
2 sections 8.250 and 8.285, RSMo, any public higher education institution is authorized to
3 enter into design-build contracts for design-build projects that exceed an expenditure of
4 one hundred thousand dollars.

5 2. Any public higher education institution entering into a design-build contract
6 under this section shall have the option of having the project financed by the developer
7 with a leaseback option with an option to purchase.

8 3. In using a design-build contract, the public higher education institution shall
9 establish a written procedure by rule for prequalifying design-build contractors before
10 such design-build contractors will be allowed to make a proposal on the project.

11 4. The governing board of the public higher education institution shall adopt
12 procedures for the prequalification review team; specifications for the design criteria
13 package; the method of advertising, receiving and evaluating proposals from design-build
14 contractors; the criteria for awarding the design-build contract based on the design criteria
15 package and a separate proposal stating the cost of construction; and other methods,
16 procedures and criteria necessary to administer this section.

17 5. The public higher education institution is authorized to issue a request for
18 proposals to a maximum of five design-build contractors who are prequalified in
19 accordance with subsection 2 of this section.

20 6. The public higher education institution may require approval of any person
21 performing subcontract work on the design-build project including, but not limited to,
22 those furnishing design services, labor, materials or equipment.

173.1203. 1. Prior to the precertification process specified in section 173.1202, the
2 public higher education institution shall publicly advertise, once a week for two consecutive
3 weeks, in a newspaper of general circulation, qualified under chapter 493, RSMo, located
4 within the city in which the public higher education institution is located, or if there be no
5 such newspaper, in a qualified newspaper of general circulation in the county, or if there
6 be no such newspaper, in a qualified newspaper of general circulation in an adjoining
7 county, and may advertise in business, trade, or minority newspapers, for qualification
8 submissions on said design-build project.

9 **2. If the public higher education institution fails to receive at least two responsive**
10 **submissions from prequalified design-build contractors, submissions shall not be opened**
11 **and it shall readvertise the project.**

12 **3. The public higher education institution shall have the right to reject any and all**
13 **submissions and proposals.**

14 **4. The proposals from prequalified design-build contractors shall be submitted**
15 **sealed and in writing, to be opened publicly at the time and place of the public higher**
16 **education institution's choosing. Technical proposals and qualifications submissions shall**
17 **be submitted separately from any cost proposals. No cost proposal shall be opened until**
18 **the technical proposals and qualifications submissions are first opened, evaluated, and**
19 **ranked in accordance with the criteria identified by the public higher education institution**
20 **in the request for proposals.**

21 **5. The design-build contract shall be awarded to the design-build contractor whose**
22 **proposal represents the best overall value to the public higher education institution in**
23 **terms of quality, technical skill, schedule, and cost.**

24 **6. No proposal shall be entertained by the public higher education institution which**
25 **is not made in accordance with the request for proposals furnished by the public higher**
26 **education institution.**

27 **7. The public higher education institution shall pay a reasonable stipend to**
28 **prequalified responsive design-build contractors who submit a proposal, but are not**
29 **awarded the design-build contract.**

173.1204. 1. The payment bond requirements of section 107.170, RSMo, shall apply
2 **to the design-build project. All persons furnishing design services shall be deemed to be**
3 **covered by the payment bond the same as any person furnishing labor or materials;**
4 **however, the performance bond for the design-build contractor does not need to cover the**
5 **design services as long as the design-build contractor or its subcontractors providing**
6 **design services carry professional liability insurance in an amount established by the**
7 **public higher education institution in the request for proposals.**

8 **2. Any person or firm providing architectural, engineering, or land surveying**
9 **services for the design-build contractor on the design-build project shall be duly licensed**
10 **or authorized in Missouri to provide such services as required by chapter 327, RSMo.**

173.1205. 1. A public higher education institution planning a design-build project
2 **may retain an architect or engineer, as appropriate to the project type, under sections 8.285**
3 **to 8.291, RSMo, to assist with programming, site selection, master plan, the design criteria**
4 **package, preparation of the request for proposals, prequalifying design-build contractors,**
5 **evaluation of proposals, and preparation of forms necessary to award the design-build**

6 contract. The public higher education institution may also retain that same architect or
7 engineer or another to perform contract administration functions on behalf of the public
8 higher education institution during the construction phase and after project completion.

9 2. Any architect or engineer who is retained by a public higher education
10 institution under this section shall be ineligible to act as the design-build contractor, or to
11 participate as part of the design-build contractor's team as a subcontractor, joint venturer,
12 partner or otherwise for the same design-build project for which the architect or engineer
13 was hired by the public higher education institution.

173.1206. Under section 327.465, RSMo, any design-build contractor that enters
2 into a design-build contract for a public higher education institution is exempt from the
3 requirement that such person or entity hold a certificate of registration or such corporation
4 hold a certificate of authority if the architectural, engineering, or land surveying services
5 to be performed under the contract are performed through subcontracts with properly
6 licensed and authorized persons or entities, and not performed by the design-build
7 contractor or its own employees.

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