

SECOND REGULAR SESSION

# HOUSE BILL NO. 2031

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DIEHL.

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D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 249, RSMo, by adding thereto one new section relating to the procurement of construction by the design-build method by certain sewer districts.

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

Section A. Chapter 249, RSMo, is amended by adding thereto one new section, to be known as section 249.425, to read as follows:

**249.425. 1. As used in this section, the following terms 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 sewer district 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 sewer district buildings or facilities under contract with a sewer district;**
- (5) "Design criteria package", performance-oriented specifications for the design-build project sufficient to permit a design-build contractor to prepare a response to the sewer district's request for proposals for a design-build project, which may include preliminary designs for the project or portions thereof;**

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           (6) "Sewer district", any metropolitan sewer district established under section  
19 30(a), article VI, Constitution of Missouri.

20           2. (1) Notwithstanding any other provision of law to the contrary, any sewer  
21 district is authorized to enter into design-build contracts for design-build projects that  
22 exceed an expenditure of one million dollars.

23           (2) In using a design-build contract, the sewer district shall establish a written  
24 procedure by rule for prequalifying design-build contractors before such design-build  
25 contractors will be allowed to make a proposal on the project.

26           (3) The sewer district shall adopt procedures for:

27           (a) The prequalification review team;

28           (b) Specifications for the design criteria package;

29           (c) The method of advertising, receiving, and evaluating proposals from  
30 design-build contractors;

31           (d) The criteria for awarding the design-build contract based on the design criteria  
32 package and a separate proposal stating the cost of construction; and

33           (e) Other methods, procedures, and criteria necessary to administer this section.

34           (4) The sewer district is authorized to issue a request for proposals to a maximum  
35 of five design-build contractors who are prequalified in accordance with this section.

36           (5) The sewer district may require approval of any person performing subcontract  
37 work on the design-build project including, but not limited to, those furnishing design  
38 services, labor, materials or equipment.

39           3. (1) Before the prequalification process specified in this section, the sewer district  
40 shall publicly advertise, once a week for two consecutive weeks, in a newspaper of general  
41 circulation, qualified under chapter 493, located within the cities located in the sewer  
42 district, or if there be no such newspaper, in a qualified newspaper of general circulation  
43 in the county, or if there be no such newspaper, in a qualified newspaper of general  
44 circulation in an adjoining county, and may advertise in business, trade, or minority  
45 newspapers, for qualification submissions on said design-build project.

46           (2) If the sewer district fails to receive at least two responsive submissions from  
47 prequalified design-build contractors, submissions shall not be opened and the sewer shall  
48 readvertise the project.

49           (3) The sewer district shall have the right to reject any and all submissions and  
50 proposals.

51           (4) The proposals from prequalified design-build contractors shall be submitted  
52 sealed and in writing, to be opened publicly at the time and place of the sewer district's  
53 choosing. Technical proposals and qualifications submissions shall be submitted

54 separately from any cost proposals. No cost proposal shall be opened until the technical  
55 proposals and qualifications submissions are first opened, evaluated, and ranked in  
56 accordance with the criteria identified by the sewer district in the request for proposals.

57 (5) The design-build contract shall be awarded to the design-build contractor  
58 whose proposal represents the best overall value to the sewer district in terms of quality,  
59 technical skill, schedule, and cost.

60 (6) No proposal shall be entertained by the sewer district that is not made in  
61 accordance with the request for proposals furnished by the sewer district.

62 (7) The sewer district shall pay a reasonable stipend to prequalified responsive  
63 design-build contractors who submit a proposal, but are not awarded the design-build  
64 contract.

65 4. (1) The payment bond requirements of section 107.170 shall apply to the  
66 design-build project. All persons furnishing design services shall be deemed to be covered  
67 by the payment bond the same as any person furnishing labor or materials; however, the  
68 performance bond for the design-build contractor does not need to cover the design  
69 services as long as the design-build contractor or its subcontractors providing design  
70 services carry professional liability insurance in an amount established by the sewer  
71 district in the request for proposals.

72 (2) Any person or firm providing architectural, engineering, or land surveying  
73 services for the design-build contractor on the design-build project shall be duly licensed  
74 or authorized in this state to provide such services as required by chapter 327.

75 5. (1) A sewer district planning a design-build project shall retain an architect or  
76 engineer, as appropriate to the project type, under sections 8.285 to 8.291, to assist with  
77 programming, site selection, master plan, the design criteria package, preparation of the  
78 request for proposals, prequalifying design-build contractors, evaluation of proposals, and  
79 preparation of forms necessary to award the design-build contract. The sewer district shall  
80 also retain that same architect or engineer or another to perform contract administration  
81 functions on behalf of the sewer district during the construction phase and after project  
82 completion. If the sewer district has an architect or engineer capable of fulfilling the  
83 functions described in this section, the sewer district is exempt from being required to  
84 retain another such professional.

85 (2) Any architect or engineer who is retained by a sewer district under this section  
86 shall be ineligible to act as the design-build contractor, or to participate as part of the  
87 design-build contractor's team as a subcontractor, joint venturer, partner, or otherwise for  
88 the same design-build project for which the architect or engineer was hired by the sewer  
89 district.

90           **6. Under section 327.465, any design-build contractor that enters into a**  
91 **design-build contract for a sewer district is exempt from the requirement that such person**  
92 **or entity hold a certificate of registration or such corporation hold a certificate of authority**  
93 **if the architectural, engineering, or land surveying services to be performed under the**  
94 **contract are performed through subcontracts with properly licensed and authorized**  
95 **persons or entities, and not performed by the design-build contractor or its own employees.**

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