

SECOND REGULAR SESSION

HOUSE BILL NO. 2730

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ANDREWS.

6730H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.5050 and 67.5060, RSMo, and to enact in lieu thereof two new sections relating to public works contracts.

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

Section A. Sections 67.5050 and 67.5060, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 67.5050 and 67.5060, to read as follows: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~~ **manager**-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: civil works projects such as roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects commonly designed by professional engineers ~~[in excess of two million dollars]~~; and noncivil works projects such as buildings, site improvements, and other structures, habitable or not, commonly designed by architects ~~[in excess of three million dollars]~~. 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.

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.

17 3. The political subdivision shall publicly disclose at a regular meeting its intent to
18 utilize the construction [~~management~~] **manager**-at-risk method and its selection criteria at least
19 one week prior to publishing the request for qualifications. Before or concurrently with selecting
20 a construction manager-at-risk, the political subdivision [~~shall~~] **may** select or designate an
21 engineer or architect who shall prepare the construction documents for the project and who shall
22 comply with all state laws, as applicable. If the engineer or architect is not a full-time employee
23 of the political subdivision, the political subdivision [~~shall~~] **may** select the engineer or architect
24 on the basis of demonstrated competence and qualifications as provided by sections 8.285 to
25 8.291. The political subdivision's engineer or architect for a project [~~may~~] **shall** not serve, alone
26 or in combination with another, as the construction manager-at-risk. This subsection does not
27 prohibit a political subdivision's engineer or architect from providing customary construction
28 phase services under 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, independently of the
31 construction manager-at-risk, inspection services, testing of construction materials, engineering,
32 and verification of testing services necessary for acceptance of the project by the political
33 subdivision.

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

49 6. The political subdivision shall publish the request for proposals or qualifications by
50 publication in a newspaper of general circulation published in the county where the political
51 subdivision is located once a week for two consecutive weeks prior to opening the proposals or
52 qualifications submissions or by a virtual notice procedure that notifies interested parties for at

53 least twenty various purchases, design contracts, construction contracts, or other contracts each
54 year for the political subdivision.

55 7. For each step, the political subdivision shall receive, publicly open, and read aloud the
56 names of the construction managers. Within forty-five days after the date of opening the
57 proposals or qualification submissions, the political subdivision or its representative shall
58 evaluate and rank each proposal or qualification submission submitted in relation to the criteria
59 set forth in the request for proposals or request for qualifications. ~~[The political subdivision shall
60 interview at least two of the top qualified offerors as part of the final selection.]~~

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

70 9. A construction manager-at-risk shall publicly advertise, in the manner prescribed by
71 chapter 50, and receive bids or proposals from trade contractors or subcontractors for the
72 performance of all major elements of the work other than the minor work that may be included
73 in the general conditions. A construction manager-at-risk may seek to perform portions of the
74 work itself if the construction manager-at-risk submits its sealed bid or sealed proposal for those
75 portions of the work in the same manner as all other trade contractors or subcontractors. All
76 sealed bids or proposals shall be submitted at the time and location as specified in the
77 advertisement for bids or proposals and shall be publicly opened and the identity of each bidder
78 and their bid amount shall be read aloud. The political subdivision shall have the authority to
79 restrict the construction manager-at-risk from submitting bids to perform portions of the work.

80 10. The construction manager-at-risk and the political subdivision or its representative
81 shall review all trade contractor, subcontractor, or construction manager-at-risk bids or proposals
82 in a manner that does not disclose the contents of the bid or proposal during the selection process
83 to a person not employed by the construction manager-at-risk, engineer, architect, or political
84 subdivision involved with the project. If the construction manager-at-risk submitted bids or
85 proposals, the political subdivision shall determine if the construction manager-at-risk's bid or
86 proposal offers the best value for the political subdivision. After all proposals have been
87 evaluated 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 political subdivision a bid or proposal from a trade contractor or subcontractor but the political
90 subdivision requires another bid or proposal to be accepted, the political subdivision shall
91 compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum
92 cost for any additional cost and risk that the construction manager-at-risk may incur because of
93 the political subdivision's requirement that another bid or proposal be accepted.

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

102 13. Any political subdivision engaged in a project under this section, which impacts a
103 railroad regulated by the Federal Railroad Administration, shall consult with the affected railroad
104 on required specifications relating to clearance, safety, insurance, and indemnification to be
105 included in the construction documents for such project.

106 14. This section shall not apply to:

107 (1) Any metropolitan sewer district established under Article VI, Section 30(a) of the
108 Constitution of Missouri;

109 (2) Any special charter city, or any city or county governed by home rule under article
110 VI, ~~[Section 18]~~ **sections 18(a) to 18(r)** or **section 19** of the Constitution of Missouri that has
111 adopted a construction manager-at-risk method via ordinance, rule or regulation.

112 15. Notwithstanding the provisions of section 23.253 to the contrary, the provisions of
113 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-stage
3 qualifications-based selection for which the design and construction services are furnished under
4 one contract;

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

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

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

15 (b) Noncivil works projects, such as buildings, site improvements, and other structures,
16 habitable or not, commonly designed by architects [~~in excess of seven million dollars~~];

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

24 (5) “Design criteria consultant”, a person, corporation, partnership, or other legal entity
25 duly licensed and authorized to practice architecture or professional engineering in this state
26 under chapter 327 who is employed by or contracted by the political subdivision to assist the
27 political subdivision in the development of project design criteria, requests for proposals,
28 evaluation of proposals, the evaluation of the construction under a design-build contract to
29 determine adherence to the design criteria, and any additional services requested by the political
30 [~~subdivisions~~] **subdivision** to represent its interests in relation to a project. The design criteria
31 consultant [~~may~~] **shall** submit a proposal or furnish design or construction services for the
32 design-build contract for which its services were sought;

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

42 (7) “Design professional services”, services that are:

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

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

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

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

51 (10) "Stipend", an amount paid to the unsuccessful but responsive, short-listed
52 design-builders to defray the cost of participating in phase II of the selection process described
53 in this section.

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

57 3. A design criteria consultant [~~shall~~] **may** be employed or retained by the political
58 subdivision to assist in preparation of the design criteria package and request for proposal,
59 perform periodic site visits to observe adherence to the design criteria, prepare progress reports,
60 review and approve progress and final pay applications of the design-builder, review shop
61 drawings and submissions, provide input in disputes, help interpret the construction documents,
62 perform inspections upon substantial and final completion, assist in warranty inspections, and
63 provide any other professional service assisting with the project administration. The design
64 criteria consultant may also evaluate construction as to the adherence of the design criteria. The
65 consultant shall be selected and its contract negotiated in compliance with sections 8.285 to
66 8.291 unless the consultant is a direct employee of the political subdivision.

67 4. The political subdivision shall publicly disclose at a regular meeting its intent to
68 utilize the design-build method and its project design criteria at least one week prior to
69 publishing the request for proposals. Notice of requests for proposals shall be advertised by
70 publication in a newspaper of general circulation published in the county where the political
71 subdivision is located once a week for two consecutive weeks prior to opening the proposals, or
72 by a virtual notice procedure that notifies interested parties for at least twenty various purchases,
73 design contracts, construction contracts, or other contracts each year for the political subdivision.
74 The political subdivision shall publish a notice of a request for proposal with a description of the
75 project, the procedures for submission, and the selection criteria to be used.

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

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

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

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

84 (3) The design criteria package;

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

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

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

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

93 (8) The amount of the stipend which will be available; and

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

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

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

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

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

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

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

113 (4) The names and qualifications of the primary design consultants and the primary trade
114 contractors with whom the design-builder proposes to subcontract or joint venture. The
115 design-builder ~~may~~ **shall** not replace an identified contractor, subcontractor, design consultant,
116 or subconsultant without the written approval of the political subdivision.

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

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

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

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

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

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

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

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

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

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

151 14. Phase III shall be conducted as follows:

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

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

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

163 (4) Cost proposals shall be opened and read aloud at the time and place specified in the
164 request for proposal. At the same time and place, the evaluation team shall make public its
165 scoring of phase II. Cost proposals shall be evaluated in accordance with the requirements of
166 the request for proposal. In evaluating the cost proposals, the lowest responsive bidder shall be
167 awarded the total number of points assigned to be awarded in phase III. For all other bidders,
168 cost points shall be calculated by reducing the maximum points available in phase III by at least
169 one percent for each percentage point by which the bidder exceeds the lowest bid and the points
170 assigned shall be added to the points assigned for phase II for each design-builder;

171 (5) If the political subdivision determines that it is not in the best interest of the political
172 subdivision to proceed with the project pursuant to the proposal offered by the design-builder
173 with the highest total number of points, the political subdivision shall reject all proposals. In this
174 event, all qualified and responsive design-builders with lower point totals shall receive a stipend
175 and the responsive design-builder with the highest total number of points shall receive an amount
176 equal to two times the stipend. If the political subdivision decides to award the project, the
177 responsive design-builder with the highest number of points shall be awarded the contract; and

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

180 15. As an inducement to qualified design-builders, the political subdivision ~~shall~~ **may**
181 pay a reasonable stipend, the amount of which shall be established in the request for proposal,
182 to each prequalified design-builder whose proposal is responsive but not accepted. Such stipend
183 shall be no less than one-half of one percent of the total project budget. Upon payment of the
184 stipend to any unsuccessful design-builder, the political subdivision shall acquire a nonexclusive
185 right to use the design submitted by the design-builder, and the design-builder shall have no
186 further liability for the use of the design by the political subdivision in any manner. If the

187 design-builder desires to retain all rights and interest in the design proposed, the design-builder
188 shall forfeit the stipend.

189 16. (1) As used in this subsection, “wastewater or water contract” means any
190 design-build contract that involves the provision of engineering and construction services either
191 directly by a party to the contract or through subcontractors retained by a party to the contract
192 for a wastewater or water storage, conveyance, or treatment facility project.

193 (2) Any political subdivision may enter into a wastewater or water contract for
194 design-build of a wastewater or water project.

195 (3) In disbursing community development block grants under 42 U.S.C. Sections 5301
196 to 5321, the department of economic development shall not reject wastewater or water projects
197 solely for utilizing wastewater or water contracts.

198 (4) The department of natural resources shall not preclude wastewater or water contracts
199 from consideration for funding provided by the water and wastewater loan fund under section
200 644.122.

201 (5) A political subdivision planning a wastewater or water design-build project [~~shall~~]
202 **may** retain an engineer duly licensed in this state to assist in preparing any necessary documents
203 and specifications and evaluations of design-build proposals.

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

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

213 19. Any political subdivision engaged in a project under this section which impacts a
214 railroad regulated by the Federal Railroad Administration shall consult with the affected railroad
215 on required specifications relating to clearance, safety, insurance, and indemnification to be
216 included in the construction documents for such project.

217 20. Under section 327.465, any design-builder that enters into a design-build contract
218 with a political subdivision is exempt from the requirement that such person or entity hold a
219 license or that such corporation hold a certificate of authority if the architectural, engineering,
220 or land-surveying services to be performed under the design-build contract are performed
221 through subcontracts or joint ventures with properly licensed or authorized persons or entities,
222 and not performed by the design-builder or its own employees.

223 21. This section shall not apply to:

224 (1) Any metropolitan sewer district established under Article VI, Section 30(a) of the
225 Constitution of Missouri; or

226 (2) Any special charter city, or any city or county governed by home rule under article
227 VI, ~~Section 18~~ **sections 18(a) to 18(r)** or **section 19** of the Constitution of Missouri that has
228 adopted a design-build process via ordinance, rule, or regulation.

229 22. The authority to use design-build and design-build contracts provided under this
230 section shall expire September 1, 2026.

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