

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 5, Page 1, Section A, Line 6, by inserting
2 after all of said line the following:

3
4 "8.260. All appropriations made by the general assembly amounting to one hundred
5 thousand dollars or more for the construction, renovation, or repair of facilities shall be expended in
6 the following manner:

7 (1) The agency requesting payment shall provide the commissioner of administration with
8 satisfactory evidence that a bona fide contract, procured in accordance with all applicable
9 procedures, exists for the work for which payment is requested;

10 (2) All requests for payment shall be approved by the architect or engineer registered to
11 practice in the state of Missouri who designed the project or who has been assigned to oversee it;

12 (3) In order to guarantee completion of the contract, the agency or officer shall retain a
13 portion of the contract value in accordance with the provisions of section [34.057] 8.960;

14 (4) A contractor may be paid for materials delivered to the site or to a storage facility
15 approved by the director of the division of facilities management, design and construction as having
16 adequate safeguards against loss, theft or conversion.

17
18 In no case shall the amount contracted for exceed the amount appropriated by the general assembly
19 for the purpose.

20 8.675. 1. As used in [~~sections 8.675 to 8.687~~] this section, the following terms mean:

21 (1) "Construction management services" includes:

22 (a) Services provided in the planning and design phases of the project including, but not
23 limited to, consulting with, advising, assisting and making recommendations to the public owner
24 and architect, engineer or registered landscape architect on all aspects of planning for project
25 construction; reviewing all plans and specifications as they are being developed and making
26 recommendations with respect to construction feasibility, availability of material and labor, time
27 requirements for procurement and construction, and projected costs; making, reviewing and refining
28 budget estimates based on the public owner's program and other available information; making
29 recommendations to the public owner and the architect or engineer regarding the division of work in
30 the plans and specifications to facilitate the bidding and awarding of contracts; soliciting the interest
31 of capable contractors and assisting the owner in taking bids on the project; analyzing the bids
32 received and awarding contracts; and preparing and monitoring a progress schedule during the
33 design phase of the project and preparation of a proposed construction schedule; and

34 (b) Services provided in the construction phase of the project including, but not limited to,
35 maintaining competent supervisory staff to coordinate and provide general direction of the work and
36 progress of the contractors on the project; observing the work as it is being performed for general

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1 conformance with working drawings and specifications; establishing procedures for coordinating
2 among the public owner, architect or engineer, contractors and construction manager with respect to
3 all aspects of the project and implementing such procedures; maintaining job site records and
4 making appropriate progress reports; implementing labor policy in conformance with the
5 requirements of the public owner; reviewing the safety and equal opportunity programs of each
6 contractor for conformance with the public owner's policy and making recommendations; reviewing
7 and processing all applications for payment by involved contractors and material suppliers in
8 accordance with the terms of the contract; making recommendations for and processing requests for
9 changes in the work and maintaining records of change orders; scheduling and conducting job
10 meetings to ensure orderly progress of the work; developing and monitoring a project progress
11 schedule, coordinating and expediting the work of all contractors and providing periodic status
12 reports to the owner and the architect or engineer; and, establishing and maintaining a cost control
13 system and conducting meetings to review costs. "Construction management services" does not
14 include services provided by a construction manager-at-risk as defined in section 8.677.

15 (2) "Construction manager as agent", any person providing construction management
16 services for a public owner. "Construction manager as agent" does not include a construction
17 manager-at-risk as defined in section 8.677;

18 (3) "Public owner", any public body, as defined in section 290.210.

19 2. The appropriate officer, board, or agency of a public owner may elect to engage the
20 construction management services of a construction manager as agent when planning, designing,
21 and constructing a building or structure or when improving, altering, or repairing a building or
22 structure. Construction management services may be used by the public owner in the
23 preconstruction phase or the construction phase of a public works project or both.

24 3. When, in the discretion of the public owner, it is determined that a public works project
25 shall be performed with a negotiated contract for construction management services, such public
26 owner shall solicit proposals from qualified construction managers as agent by publishing a request
27 for proposals for a period of ten or more days on the website of the public owner or through an
28 electronic procurement system. The number of such proposals shall not be restricted or curtailed
29 but shall be open to all construction managers as agent complying with the terms upon which the
30 proposals are requested.

31 4. When selecting a construction manager as agent for a project, the public owner shall
32 consider the following:

33 (1) Fees for overhead and profit;

34 (2) Costs for reimbursable items as defined in the public owner's request for proposal;

35 (3) Qualifications;

36 (4) Demonstration of ability to perform projects comparable in design, scope, and
37 complexity;

38 (5) Demonstration of good faith efforts to achieve compliance with federal, state, and local
39 affirmative action requirements;

40 (6) References from owners for whom construction management has been performed;

41 (7) Financial strength;

42 (8) Qualifications of in-house personnel who will manage the project; and

43 (9) Demonstration of successful management systems employed for the purposes of
44 estimating, scheduling, and cost controls.

45
46 5. The public owner may negotiate a contract for construction management services with
47 any construction manager as agent selected according to the criteria of this subsection. If the public
48 owner is unable to negotiate a contract for the type of services required with any of the construction
49 managers as agent selected for a project at a price determined by the public owner to be fair and

reasonable, the public owner shall reevaluate the necessary construction management services, including the scope and reasonable fee requirements, and again solicit proposals from construction managers as agent complying with the terms of the revised requests for proposal.

6. Upon award of a construction management services contract, the successful construction manager as agent shall contract with the public owner to furnish his or her skill and judgment in cooperation with, and reliance upon, the services of the project architect or engineer. The construction manager as agent shall furnish the business administration, management of the construction process, and other specified services to the public owner and shall perform in an expeditious and economical manner consistent with the interest of the public owner. If the public owner determines it to be in the public's best interest, the construction manager as agent may provide or perform basic services for which reimbursement is provided in the general conditions to the construction management services contract. The construction manager as agent shall not be permitted to bid on or perform any of the actual construction on a public works project in which he or she is acting as construction manager as agent, nor shall any construction firm that controls, is controlled by, or shares common ownership or control with the construction manager as agent be allowed to bid on or perform work on such project. The actual construction work on the project shall be awarded by competitive bidding as provided by law. All successful bidders shall contract directly with the public owner but shall perform at the direction of the construction manager-at-risk unless otherwise provided in the construction manager-at-risk contract with the public owner. All successful bidders shall provide payment and performance bonds to the public owner. All successful bidders shall meet all obligations of a prime contractor to whom a contract is awarded, pertaining to the payment of prevailing wages under sections 290.210 to 290.340. In addition, all nonresident employers shall meet the bonding and registration requirements of sections 285.230 to 285.234.

7. No construction management services contract shall be awarded by a public owner on a negotiated basis, as provided in this section, if the construction manager as agent or firm that controls, is controlled by, or shares common ownership or control with the construction manager as agent guarantees, warrants, or otherwise assumes financial responsibility for the work of others on the project or furnishes or guarantees a performance or payment bond for other contractors on the project. In any such case, the contract for construction management services shall be let by competitive bidding as in the case of contract for construction work or as provided in section 8.677, if applicable.

8. (1) A construction manager as agent shall not be deemed a contractor for the purposes of section 107.170.

(2) Nothing in this section shall apply to a public body doing work if the construction is done by employees of the public body.

8.677. ~~[The appropriate officer, board or agency of a public owner may elect to engage the construction management services of a construction manager when planning, designing and constructing a building or structure or when improving, altering or repairing a building or structure. Construction management services may be used by the public owner in the preconstruction phase or the construction phase of public works project or in both phases of the project.]~~ 1. As used in this section, the following terms mean:

(1) "Construction manager-at-risk", a sole proprietorship, partnership, corporation, or other legal entity that proposes to enter into a construction management-at-risk contract pursuant to this section, 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 the division of facilities management, design and construction regarding construction during and after the design of the project;

(2) "Division", the office of administration's division of facilities management, design and

1 construction.

2 2. The division may use the construction manager-at-risk method for any project within its
3 authority in excess of three hundred thousand dollars. In using that method and in entering into a
4 contract for the services of a construction manager-at-risk, the division shall follow the procedures
5 prescribed by this section.

6 3. Before or concurrently with selecting a construction manager-at-risk, the division shall
7 select or designate an engineer or architect who shall prepare the construction documents for the
8 project and who shall comply with all state laws, as applicable. If the engineer or architect is not a
9 full-time employee of the division, the division shall select the engineer or architect on the basis of
10 demonstrated competence and qualifications as provided by sections 8.285 to 8.291. The division's
11 engineer or architect for a project shall not serve, alone or in combination with another, as the
12 construction manager-at-risk. This subsection does not prohibit the division's engineer or architect
13 from providing customary construction phase services under the engineer's or architect's original
14 professional service agreement in accordance with applicable licensing laws.

15 4. The division may provide or contract for, independently of the construction manager-at-
16 risk, inspection services, testing of construction materials, engineering, and verification of testing
17 services necessary for acceptance of the project by the division.

18 5. The division shall select the construction manager-at-risk using the following two-step
19 process:

20 (1) The division shall prepare a request for qualifications that includes general information
21 on the project site, project scope, schedule, selection criteria, the time and place for receipt of
22 proposals or qualifications, as applicable, and other information that may assist the division in its
23 selection of a construction manager-at-risk. The division shall state the selection criteria in the
24 request for proposals or qualifications, as applicable. The selection criteria may include the
25 construction manager-at-risk's experience, past performance, safety record, proposed personnel and
26 methodology, and other appropriate factors that demonstrate the capability of the construction
27 manager-at-risk. The division shall not request fees or prices in the first step; and

28 (2) The division may request that five or fewer construction managers-at-risk, selected
29 solely on the basis of qualifications, provide additional information, including the construction
30 manager-at-risk's proposed fee and its price for fulfilling the general conditions. Qualifications shall
31 account for a minimum of forty percent of the evaluation. Cost shall account for a maximum of
32 sixty percent of the evaluation.

33 6. The division shall publish the request for proposals or qualifications for a period of ten or
34 more days on the website of the division or through an electronic procurement system.

35 7. For each step in subsection 5, the division shall receive and open the names and proposals
36 or qualifications of the construction managers-at-risk at the date and time specified in the request for
37 proposals or qualifications. The names of the construction managers-at-risk shall be made publicly
38 available. Within forty-five days after the date of opening the proposals or qualification
39 submissions, the division or its representative shall evaluate and rank each proposal or qualification
40 submission submitted in relation to the criteria set forth in the request for proposals or request for
41 qualifications. The division shall interview at least two of the top qualified offerors as part of the
42 final selection.

43 8. The division or its representative shall select the construction manager-at-risk whose
44 proposal offers the best value for the division based on the published selection criteria and on its
45 ranking evaluation. The division or its representative shall first attempt to negotiate a contract with
46 the selected construction manager-at-risk. If the division or its representative is unable to negotiate
47 a satisfactory contract with the selected construction manager-at-risk, the division or its
48 representative shall, formally and in writing, end negotiations with that construction manager-at-risk
49 and proceed to negotiate with the next construction manager-at-risk in the order of the selection

1 ranking until a contract is reached or negotiations with all ranked construction managers-at-risk end.

2 9. The construction manager-at-risk shall perform construction work equal in value to at
 3 least fifteen percent of the estimated cost of construction using individuals directly employed by the
 4 construction manager-at-risk. A construction manager-at-risk shall publicly solicit and receive bids
 5 or proposals from trade contractors or subcontractors for the performance of all major elements of
 6 the work other than work that the construction manager-at-risk self-performs. The construction
 7 manager-at-risk shall solicit bids from potential contractors or subcontractors by newspaper
 8 advertising, by posting a notice on the website of at least one construction trade industry association,
 9 or by other solicitation methods agreed to by the division that are likely to reach a substantial
 10 number of qualified contractors or subcontractors. All sealed bids or proposals shall be submitted at
 11 the time and location as specified in the solicitation for bids or proposals and shall be opened and
 12 the identity of each bidder and their bid amount shall be made publicly available.

13 10. The construction manager-at-risk and the division or its representative shall review all
 14 trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of
 15 the bid or proposal during the selection process to a person not employed by the construction
 16 manager-at-risk, engineer, architect, or division involved with the project. After all proposals have
 17 been evaluated and clarified, the award of all subcontracts shall be made public.

18 11. If the construction manager-at-risk reviews, evaluates, and recommends to the division a
 19 bid or proposal from a trade contractor or subcontractor but the division requires another bid or
 20 proposal to be accepted, the division shall compensate the construction manager-at-risk by a change
 21 in price, time, or guaranteed maximum cost for any additional cost and risk that the construction
 22 manager-at-risk may incur because of the division's requirement that another bid or proposal be
 23 accepted.

24 12. If a selected trade contractor or subcontractor materially defaults in the performance of
 25 its work or fails to execute a subcontract after being selected in accordance with this section, the
 26 construction manager-at-risk may itself, without soliciting bids, fulfill the contract requirements or
 27 select a replacement trade contractor or subcontractor to fulfill the contract requirements. The penal
 28 sums of the performance and payment bonds delivered to the division shall each be in an amount
 29 equal to the fixed contract amount or guaranteed maximum price. The construction manager-at-risk
 30 shall deliver the bonds not later than the tenth day after the date the fixed contract amount or
 31 guaranteed maximum price is established.

32 8.679. [When, in the discretion of the public owner, it is determined that a public works
 33 project should be performed with a negotiated contract for construction management services, such
 34 public owner shall advertise and solicit proposals from qualified construction managers in the
 35 following manner: If the total cost for the erection or construction of any building or structure or
 36 the improvement, alteration or repair of a building or structure exceeds five hundred thousand
 37 dollars, the public owner shall request and solicit proposals by advertising for ten days in one
 38 newspaper of general circulation in the county where the work is located. If the cost of the work
 39 contemplated exceeds one million five hundred thousand dollars, proposals shall be solicited by
 40 advertisement for ten days in two daily newspapers in the state which have not less than fifty
 41 thousand daily circulation in addition to the advertisement in the county where the work is located.
 42 The number of such proposals shall not be restricted or curtailed, but shall be open to all
 43 construction managers complying with the terms upon which the proposals are requested.] 1. As
 44 used in this section, the following terms mean:

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

47 (2) "Design-build contract", a contract that is subject to a three-stage, qualifications-based
 48 selection process similar to that described in sections 8.285 to 8.291 between the division of
 49 facilities management, design and construction and a design-builder to furnish the architectural,

1 engineering, and related design services and the labor, materials, supplies, equipment, and other
 2 construction services required for a design-build project;

3 (3) "Design-build project", the design, construction, alteration, addition, remodeling, or
 4 improvement of any buildings or facilities under contract with the division of facilities management,
 5 design and construction. Such design-build projects include, but are not limited to:

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

8 (b) Noncivil works projects such as buildings, site improvements, and other structures,
 9 habitable or not, commonly designed by architects in excess of three hundred thousand dollars;

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

17 (5) "Design criteria consultant", a person, corporation, partnership, or other legal entity duly
 18 licensed and authorized to practice architecture or professional engineering in this state under
 19 chapter 327 who is employed by or contracted by the division of facilities management, design and
 20 construction to assist the division in the development of project design criteria, requests for
 21 proposals, evaluation of proposals, the evaluation of the construction under a design-build contract
 22 to determine adherence to the design criteria, and any additional services requested by the division
 23 of facilities management, design and construction to represent its interests in relation to a project.
 24 The design criteria consultant shall not submit a proposal or furnish design or construction services
 25 for the design-build contract for which its services were sought;

26 (6) "Design criteria package", a performance-oriented program, scope, and specifications for
 27 the design-build project sufficient to permit a design-builder to prepare a response to the division of
 28 facilities management, design and construction's request for proposals for a design-build project,
 29 which may include capacity, durability, standards, ingress and egress requirements, performance
 30 requirements, description of the site, surveys, soil and environmental information concerning the
 31 site, interior space requirements, material quality standards, design and construction schedules, site
 32 development requirements, provisions for utilities, storm water retention and disposal, parking
 33 requirements, applicable governmental code requirements, preliminary designs for the project or
 34 portions thereof, and other criteria for the intended use of the project;

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

36 (a) Within the practice of architecture as defined in section 327.091 or within the practice of
 37 professional engineering as defined in section 327.181; or

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

40 (8) "Division", the office of administration's division of facilities, management design and
 41 construction;

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

44 (10) "Request for proposal", the document by which the division of facilities management,
 45 design and construction solicits proposals for a design-build contract;

46 (11) "Stipend", an amount paid to the unsuccessful but responsive, short-listed design-
 47 builders to defray the cost of participating in phase II of the selection process described in this
 48 section.

49 2. In using a design-build contract, the division shall determine the scope and level of detail

1 required to permit qualified persons to submit proposals in accordance with the request for proposals
 2 given the nature of the project.

3 3. A design criteria consultant shall be employed or retained by the division to assist in
 4 preparation of the design criteria package and request for proposal, perform periodic site visits to
 5 observe adherence to the design criteria, prepare progress reports, review and approve progress and
 6 final pay applications of the design-builder, review shop drawings and submissions, provide input in
 7 disputes, help interpret the construction documents, perform inspections upon substantial and final
 8 completion, assist in warranty inspections, and provide any other professional service assisting with
 9 the project administration. The design criteria consultant may also evaluate construction as to the
 10 adherence to the design criteria. The design criteria consultant shall be selected and its contract
 11 negotiated in compliance with sections 8.285 to 8.291 unless the consultant is a direct employee of
 12 the division.

13 4. The division shall publish the request for proposals for a period of ten or more days on
 14 the website of the division or through an electronic procurement system.

15 5. The division shall establish in the request for proposal a time, place, and other specific
 16 instructions for the receipt of proposals. Proposals not submitted in strict accordance with the
 17 instructions shall be subject to rejection.

18 6. A request for proposal shall be prepared for each design-build contract and contain at
 19 minimum the following elements:

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

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

23 (3) The design criteria package;

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

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

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

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

32 (8) The amount of the stipend that will be available; and

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

37 7. The division shall solicit proposals in a three-phase process. Phase I shall be the
 38 solicitation of qualifications of the design-build team. Phase II shall be the solicitation of a
 39 technical proposal including conceptual design for the project. Phase III shall be the proposal of the
 40 construction cost.

41 8. The division shall review the submissions of the proposals and assign points to each
 42 proposal in accordance with this section and as set out in the instructions of the request for proposal.

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

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

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

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

1 (4) The names and qualifications of the primary design consultants and the primary trade
2 contractors with whom the design-builder proposes to subcontract or joint venture. The design-
3 builder shall not replace an identified contractor, subcontractor, design consultant, or subconsultant
4 without the written approval of the division.

5 10. The division shall evaluate the qualifications of all the design-builders who submitted
6 proposals in accordance with the instructions of the request for proposal. Architectural and
7 engineering services on the project shall be evaluated in accordance with the requirements of
8 sections 8.285 and 8.291. Qualified design-builders selected by the evaluation team may proceed
9 to phase II of the selection process. Design-builders lacking the necessary qualifications to perform
10 the work shall be disqualified and shall not proceed to phase II of the process. This process of short
11 listing shall narrow the number of qualified design-builders to not more than five and no fewer than
12 two. Under no circumstances shall price or fees be a part of the prequalification criteria. Design-
13 builders may be interviewed in either phase I or phase II of the process. Points assigned in phase I
14 of the evaluation process shall not carry forward to phase II of the process. All qualified design-
15 builders shall be ranked on points given in phases II and III only.

16 11. The division shall have discretion to disqualify any design-builder who, in the division's
17 opinion, lacks the minimum qualifications required to perform the work.

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

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

22 (1) The division shall invite the top qualified design-builders to participate in phase II of the
23 process;

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

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

29 (4) Up to twenty percent of the points awarded to each design-builder in phase II may be
30 based on each design-builder's qualifications and ability to design, contract, and deliver the
31 project on time and within the budget of the division;

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

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

37 14. Phase III shall be conducted as follows:

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

41 (2) Cost proposals shall be submitted in accordance with the instructions of the request for
42 proposal. The division shall reject any proposal that is not submitted on time. Phase III shall
43 account for not less than forty percent of the total point score as specified in the request for
44 proposal;

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

49 (4) Cost proposals shall be opened at the time and place specified in the request for proposal

and shall be made publicly available. At the same time and place, the evaluation team shall make public its scoring of phase II. Cost proposals shall be evaluated in accordance with the requirements of the request for proposal. In evaluating the cost proposals, the lowest responsive bidder shall be awarded the total number of points assigned to be awarded in phase III. For all other bidders, cost points shall be calculated by reducing the maximum points available in phase III by at least one percent for each percentage point by which the bidder exceeds the lowest bid and the points assigned shall be added to the points assigned for phase II for each design-builder;

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

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

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

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

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

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

[34.057.] 8.960. 1. Unless contrary to any federal funding requirements or unless funds from a state grant are not timely received by the contracting public municipality but notwithstanding any other law to the contrary, all public works contracts made and awarded by the appropriate officer, board or agency of the state or of a political subdivision of the state or of any district therein, including any municipality, county and any board referred to as the public owner, for construction, reconstruction or alteration of any public works project, shall provide for prompt payment by the public owner to the contractor, and any professional engineer, architect, landscape architect, or land surveyor, as well as prompt payment by the contractor to the subcontractor and material supplier in accordance with the following:

(1) A public owner shall make progress payments to the contractor and any professional engineer, architect, landscape architect, or land surveyor on at least a monthly basis as the work

1 progresses, or, on a lump sum basis according to the terms of the lump sum contract. Except in the
2 case of lump sum contracts, payments shall be based upon estimates prepared at least monthly of
3 work performed and material delivered, as determined by the project architect or engineer.
4 Retainage withheld on any construction contract or subcontract for public works projects shall not
5 exceed five percent of the value of the contract or subcontract. If the contractor is not required to
6 obtain a bond under section 107.170 because the cost of the public works contract is not estimated to
7 exceed fifty thousand dollars, the public owner may withhold retainage on the public works project
8 in an amount not to exceed ten percent of the value of the contract or subcontract. The public owner
9 shall pay the contractor the amount due, less a retainage, within thirty days following the latter of
10 the following:

11 (a) The date of delivery of materials or construction services purchased;

12 (b) The date, as designated by the public owner, upon which the invoice is duly delivered to
13 the person or place designated by the public owner; or

14 (c) In those instances in which the contractor approves the public owner's estimate, the date
15 upon which such notice of approval is duly delivered to the person or place designated by the public
16 owner;

17 (2) Payments shall be considered received within the context of this section when they are
18 duly posted with the United States Postal Service or other agreed upon delivery service or when
19 they are hand-delivered to an authorized person or place as agreed to by the contracting parties;

20 (3) If, in the discretion of the owner and the project architect or engineer and the contractor,
21 it is determined that a subcontractor's performance has been completed and the subcontractor can be
22 released prior to substantial completion of the public works contract without risk to the public
23 owner, the contractor shall request such adjustment in retainage, if any, from the public owner as
24 necessary to enable the contractor to pay the subcontractor in full. The public owner may reduce or
25 eliminate retainage on any contract payment if, in the public owner's opinion, the work is
26 proceeding satisfactorily. If retainage is released and there are any remaining minor items to be
27 completed, an amount equal to one hundred fifty percent of the value of each item as determined by
28 the public owner's duly authorized representatives shall be withheld until such item or items are
29 completed;

30 (4) The public owner shall pay at least ninety-eight percent of the retainage, less any offsets
31 or deductions authorized in the contract or otherwise authorized by law, to the contractor. The
32 contractor shall pay the subcontractor or supplier after substantial completion of the contract work
33 and acceptance by the public owner's authorized contract representative, or as may otherwise be
34 provided by the contract specifications for state highway, road or bridge projects administered by
35 the state highways and transportation commission. Such payment shall be made within thirty days
36 after acceptance, and the invoice and all other appropriate documentation and certifications in
37 complete and acceptable form are provided, as may be required by the contract documents. If the
38 public owner or the owner's representative determines the work is not substantially completed and
39 accepted, then the owner or the owner's representative shall provide a written explanation of why
40 the work is not considered substantially completed and accepted within fourteen calendar days to
41 the contractor, who shall then provide such notice to the subcontractor or suppliers responsible for
42 such work. If such written explanation is not given by the public body, the public body shall pay at
43 least ninety-eight percent of the retainage within thirty calendar days. If at that time there are any
44 remaining minor items to be completed, an amount equal to one hundred fifty percent of the value
45 of each item as determined by the public owner's representative shall be withheld until such items
46 are completed;

47 (5) All estimates or invoices for supplies and services purchased, approved and processed,
48 or final payments, shall be paid promptly and shall be subject to late payment charges provided in
49 this section. Except as provided in subsection 4 of this section, if the contractor has not been paid

1 within thirty days as set forth in subdivision (1) of subsection 1 of this section, the contracting
2 agency shall pay the contractor, in addition to the payment due him, interest at the rate of one and
3 one-half percent per month calculated from the expiration of the thirty-day period until fully paid;

4 (6) When a contractor receives any payment, the contractor shall pay each subcontractor and
5 material supplier in proportion to the work completed by each subcontractor and material supplier
6 his application less any retention not to exceed five percent. If the contractor receives less than the
7 full payment due under the public construction contract, the contractor shall be obligated to disburse
8 on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers
9 each receiving a prorated portion based on the amount of payment. When, however, the public
10 owner does not release the full payment due under the contract because there are specific areas of
11 work or materials he is rejecting or because he has otherwise determined such areas are not suitable
12 for payment then those specific subcontractors or suppliers involved shall not be paid for that
13 portion of the work rejected or deemed not suitable for payment; provided the public owner or the
14 owner's representative gives a written explanation to the contractor, subcontractor, or supplier
15 involved as to why the work or supplies were rejected or deemed not suitable for payment, and all
16 other subcontractors and suppliers shall be paid in full;

17 (7) If the contractor, without reasonable cause, fails to make any payment to his
18 subcontractors and material suppliers within fifteen days after receipt of payment under the public
19 construction contract, the contractor shall pay to his subcontractors and material suppliers, in
20 addition to the payment due them, interest in the amount of one and one-half percent per month,
21 calculated from the expiration of the fifteen-day period until fully paid. This subdivision shall also
22 apply to any payments made by subcontractors and material suppliers to their subcontractors and
23 material suppliers and to all payments made to lower tier subcontractors and material suppliers
24 throughout the contracting chain;

25 (8) The public owner shall make final payment of all moneys owed to the contractor,
26 including any retainage withheld under subdivision (4) of this subsection, less any offsets or
27 deductions authorized in the contract or otherwise authorized by law, within thirty days of the due
28 date. Final payment shall be considered due upon the earliest of the following events:

29 (a) Completion of the project and filing with the owner of all required documentation and
30 certifications, in complete and acceptable form, in accordance with the terms and conditions of the
31 contract;

32 (b) The project is certified by the architect or engineer authorized to make such certification
33 on behalf of the owner as having been completed, including the filing of all documentation and
34 certifications required by the contract, in complete and acceptable form; or

35 (c) The project is certified by the contracting authority as having been completed, including
36 the filing of all documentation and certifications required by the contract, in complete and
37 acceptable form.

38 2. Nothing in this section shall prevent the contractor or subcontractor, at the time of
39 application or certification to the public owner or contractor, from withholding such applications or
40 certifications to the owner or contractor for payment to the subcontractor or material supplier.
41 Amounts intended to be withheld shall not be included in such applications or certifications to the
42 public owner or contractor. Reasons for withholding such applications or certifications shall
43 include, but not be limited to, the following: unsatisfactory job progress; defective construction
44 work or material not remedied; disputed work; failure to comply with other material provisions of
45 the contract; third-party claims filed or reasonable evidence that a claim will be filed; failure of the
46 subcontractor to make timely payments for labor, equipment and materials; damage to a contractor
47 or another subcontractor or material supplier; reasonable evidence that the contract cannot be
48 completed for the unpaid balance of the subcontract sum or a reasonable amount for retention, not to
49 exceed the initial percentage retained by the owner.

1 3. Should the contractor determine, after application or certification has been made and after
2 payment has been received from the public owner, or after payment has been received by a
3 contractor based upon the public owner's estimate of materials in place and work performed as
4 provided by contract, that all or a portion of the moneys needs to be withheld from a specific
5 subcontractor or material supplier for any of the reasons enumerated in this section, and such
6 moneys are withheld from such subcontractor or material supplier, then such undistributed amounts
7 shall be specifically identified in writing and deducted from the next application or certification
8 made to the public owner or from the next estimate by the public owner of payment due the
9 contractor, until a resolution of the matter has been achieved. Disputes shall be resolved in
10 accordance with the terms of the contract documents. Upon such resolution the amounts withheld
11 by the contractor from the subcontractor or material supplier shall be included in the next
12 application or certification made to the public owner or the next estimate by the public owner and
13 shall be paid promptly in accordance with the provisions of this section. This subsection shall also
14 apply to applications or certifications made by subcontractors or material suppliers to the contractor
15 and throughout the various tiers of the contracting chain.

16 4. The contracts which provide for payments to the contractor based upon the public owner's
17 estimate of materials in place and work performed rather than applications or certifications
18 submitted by the contractor, the public owner shall pay the contractor within thirty days following
19 the date upon which the estimate is required by contract to be completed by the public owner, the
20 amount due less a retainage not to exceed five percent. All such estimates by the public owner shall
21 be paid promptly and shall be subject to late payment charges as provided in this subsection. After
22 the thirtieth day following the date upon which the estimate is required by contract to be completed
23 by the public owner, the contracting agency shall pay the contractor, in addition to the payment due
24 him, interest at a rate of one and one-half percent per month calculated from the expiration of the
25 thirty-day period until fully paid.

26 5. The public owner shall pay or cause to be paid to any professional engineer, architect,
27 landscape architect, or land surveyor the amount due within thirty days following the receipt of an
28 invoice prepared and submitted in accordance with the contract terms. In addition to the payment
29 due, the contracting agency shall pay interest at the rate of one and one-half percent per month
30 calculated from the expiration of the thirty-day period until fully paid.

31 6. Nothing in this section shall prevent the owner from withholding payment or final
32 payment from the contractor, or a subcontractor or material supplier. Reasons for withholding
33 payment or final payment shall include, but not be limited to, the following: liquidated damages;
34 unsatisfactory job progress; defective construction work or material not remedied; disputed work;
35 failure to comply with any material provision of the contract; third party claims filed or reasonable
36 evidence that a claim will be filed; failure to make timely payments for labor, equipment or
37 materials; damage to a contractor, subcontractor or material supplier; reasonable evidence that a
38 subcontractor or material supplier cannot be fully compensated under its contract with the contractor
39 for the unpaid balance of the contract sum; or citation by the enforcing authority for acts of the
40 contractor or subcontractor which do not comply with any material provision of the contract and
41 which result in a violation of any federal, state or local law, regulation or ordinance applicable to
42 that project causing additional costs or damages to the owner.

43 7. Nothing in this section shall be construed to require direct payment by a public owner to a
44 subcontractor or supplier, except in the case of the default, as determined by a court, of the
45 contractor on the contract with the public owner where no performance or payment bond is required
46 or where the surety fails to execute its duties, as determined by a court.

47 8. Notwithstanding any other provisions in this section to the contrary, no late payment
48 interest shall be due and owing for payments which are withheld in good faith for reasonable cause
49 pursuant to subsections 2, 5, and 6 of this section. If it is determined by a court of competent

jurisdiction that a payment which was withheld pursuant to subsections 2, 5, and 6 of this section was not withheld in good faith for reasonable cause, the court may impose interest at the rate of one and one-half percent per month calculated from the date of the invoice and may, in its discretion, award reasonable attorney fees to the prevailing party. In any civil action or part of a civil action brought pursuant to this section, if a court determines after a hearing for such purpose that the cause was initiated, or a defense was asserted, or a motion was filed, or any proceeding therein was done frivolously and in bad faith, the court shall require the party who initiated such cause, asserted such defense, filed such motion, or caused such proceeding to be had to pay the other party named in such action the amount of the costs attributable thereto and reasonable expenses incurred by such party, including reasonable attorney fees.

[34.058.] 8.962. 1. As used in this section, the term "public works contract" means a contract of the state, county, city and other political subdivisions of the state, except the Missouri transportation department, for the construction, alteration, repair, or maintenance of any building, structure, highway, bridge, viaduct, pipeline, public works, or any other works dealing with construction, which shall include, but need not be limited to, moving, demolition, or excavation performed in conjunction with such work.

2. Any clause in a public works contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages, or obtain an equitable adjustment, for delays in performing such contract, if such delay is caused in whole, or in part, by acts or omissions within the control of the contracting public entity or persons acting on behalf thereof, is against public policy and is void and unenforceable.

3. Subsection 2 of this section is not intended to render void any contract provision of a public works contract that:

(1) Precludes a contractor from recovering that portion of delay costs caused by the acts or omissions of the contractor or its agents;

(2) Requires notice of any delay by the party responsible for such delay;

(3) Provides for reasonable liquidated damages; or

(4) Provides for arbitration or any other procedure designed to settle contract disputes.

[34.203.] 8.964. The provisions of sections [34.203 to 34.216] 8.964 to 8.974 shall be known and may be cited as the "Fairness in Public Construction Act".

[34.206.] 8.966. The purpose of sections [34.203 to 34.216] 8.964 to 8.974 is to fulfill the state's proprietary objectives in maintaining and promoting the economical, nondiscriminatory, and efficient expenditures of public funds in connection with publicly funded or assisted construction projects. Nothing in sections [34.203 to 34.216] 8.964 to 8.974 shall prohibit employers or other parties covered by the National Labor Relations Act from entering into agreements or engaging in any other activity arguably protected by law, nor shall any aspect of sections [34.203 to 34.216] 8.964 to 8.974 be interpreted in such a way as to interfere with the labor relations of parties covered by the National Labor Relations Act.

[34.209.] 8.968. 1. The state, any agency of the state, any political subdivision of the state, or any instrumentality thereof, when engaged in procuring or letting contracts for construction, repair, remodeling, or demolition of a facility shall ensure that bid specification, project agreements, and other controlling documents entered into, required, or subject to approval by the state, agency, political subdivision, or instrumentality do not:

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects; or

(2) Discriminate against, encourage, or give preferential treatment to bidders, offerors, contractors, or subcontractors for:

(a) Entering or refusing to enter agreements with one or more labor organizations on the same or related construction projects; or

(b) Remaining or refusing to remain signatory with one or more labor organizations on the same or related construction projects.

2. Nothing in this section shall be construed to prohibit the state, any agency of the state, any political subdivision of the state, or any instrumentality thereof from requiring bidders, offerors, contractors, or subcontractors, as a condition of receiving work or submitting a bid, to test its workers and employees for the presence of illegal drugs.

~~[34.212.] 8.970.~~ 1. The state, any agency of the state, any political subdivision of the state, or any instrumentality thereof shall not issue or award grants, tax abatements, or tax credits or enter into cooperative agreements for construction projects or for the improvement, maintenance, or renovation of real property or fixtures, a condition of which requires that bid specifications, project agreements, or other controlling documents pertaining to the grant, tax abatement, tax credit, or cooperative agreement contain any of the elements specified in section ~~[34.209]~~ 8.968.

2. The state, any agency of the state, any political subdivision, or any instrumentality thereof shall exercise such authority as may be required to preclude a grant, tax abatement, or tax credit recipient or party to a cooperative agreement from imposing any of the elements specified in section ~~[34.209]~~ 8.964 in connection with any grant or cooperative agreement awarded or entered into. Nothing in sections ~~[34.20 to 34.217]~~ 8.964 to 8.974 shall prohibit contractors or subcontractors from voluntarily entering into agreements described in section ~~[34.209]~~ 8.964.

~~[34.217.] 8.972.~~ Notwithstanding the provisions of section 1.140, the provisions of sections 290.095 and 290.250 and sections ~~[34.203 to 34.216]~~ 8.964 to 8.974 shall not be severable. In the event a court of competent jurisdiction rules that any part of this act is unenforceable, the entire act shall be rendered null and void.

~~[34.218.] 8.974.~~ 1. Any entity which violates the provisions of sections ~~[34.203 to 34.217]~~ 8.964 to 8.974 shall be liable to the person affected for such equitable relief as may be appropriate, including reasonable attorney's fees.

2. Any entity which violates the provisions of sections ~~[34.203 to 34.217]~~ 8.964 to 8.974 shall not be eligible for any state funding or tax credits issued by the state for two years.

3. The prosecuting attorney or circuit attorney with jurisdiction over the location where a violation of sections ~~[34.203 to 34.217]~~ 8.964 to 8.974 occurs, or the attorney general of this state, shall investigate complaints of violation of such sections, and use all means at their command to ensure the effective enforcement of this section.

34.055. 1. Except as otherwise provided in section ~~[34.057]~~ 8.960, all invoices for supplies and services purchased by the state, duly approved and processed, shall be subject to interest charges or late payment charges as provided in this section.

2. After the forty-fifth day following the later of the date of delivery of the supplies and services or the date upon which the invoice is duly approved and processed, interest retroactive to the thirtieth day shall be paid on any unpaid balance, except balances for services provided by a gas corporation, electrical corporation, water corporation, or sewer corporation which has received authorization from the public service commission to impose late payment charges on delinquent utility bills, upon application of the vendor thereof. The rate of such interest shall be three percentage points above the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System.

3. The state shall be liable for late payment charges on any delinquent bill for services purchased by the state from a gas corporation, electrical corporation, water corporation, or sewer corporation which has received authorization from the public service commission to impose late payment charges on delinquent utility bills. The rate of such late payment charges shall be as established for each such corporation by order of the public service commission, but bills rendered to the state shall not be considered delinquent until thirty days after rendition of the bill by the corporation.

1 4. Any such interest charges or late payment charges shall be paid from appropriations
2 which were made for the fiscal year in which the supplies or services were delivered to the
3 respective departments purchasing such supplies or services. The commissioner of administration
4 shall be responsible for the timely implementation of this section and all officers, departments,
5 institutions and agencies of state government shall fully cooperate with the commissioner of
6 administration in the implementation of this section. No late payment penalty shall be assessed
7 against, nor payable by, the state unless pursuant to the provisions of this section.

8 5. Notwithstanding any other provision of this section, recipients of funds from the low-
9 income energy assistance program shall be exempt from interest charges imposed by such section
10 for the duration of the recipient's participation in the program.

11 34.100. The commissioner of administration may, when in the commissioner's best judgment
12 it is in the best interests of the state, delegate the commissioner's procurement authority pursuant to
13 this chapter to an individual department; provided, however, that each instance of single feasible
14 source purchasing authority in excess of ~~five~~ ten thousand dollars under section 34.044 must be
15 specifically delegated by the commissioner. The delegation may allow departments to negotiate in
16 accordance with section 34.042 the purchase of services for patients, residents or clients with funds
17 appropriated for this purpose. In accepting this delegated authority the department acknowledges its
18 ability to, and agrees to, fulfill all of the requirements of this chapter in making purchases and
19 entering into contracts and keeping records. No claim for payment based upon any purchase under
20 this section shall be certified by the commissioner unless accompanied by such documentation of
21 compliance with the provisions of this chapter as the commissioner may require. Any department
22 that fails to fulfill all such requirements may have its delegated authority rescinded by the
23 commissioner of administration."; and
24

25 Further amend said bill by amending the title, enacting clause, and intersectional references
26 accordingly.