

FIRST REGULAR SESSION

HOUSE BILL NO. 536

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

1537H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 8.690, 67.5050, and 67.5060, RSMo, and to enact in lieu thereof three new sections relating to construction delivery methods of political subdivisions.

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

Section A. Sections 8.690, 67.5050, and 67.5060, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 8.690, 67.5050, and 67.5060, to read as follows:

8.690. 1. The office of administration shall have the authority to utilize:

(1) The construction manager-at-risk delivery method, as provided for in section 67.5050; and

(2) The design-build delivery method, as provided for in section 67.5060, only as follows:

(a) For noncivil works projects, as that term is used in section 67.5060, in excess of seven million dollars; and

(b) No more than five noncivil works projects, as that term is used in section 67.5060, may be contracted for in any fiscal year that are less than seven million dollars.

2. The office of administration shall not be subject to subsection 15 of section 67.5050 ~~[and subsection 22 of section 67.5060]~~ in executing contracts pursuant to this section.

3. The office of administration shall not be subject to subsection 4 of section 67.5060. The office of administration shall publish its advertisement for proposals in the publications, and on the website of the officer or agency or through an electronic procurement system as set

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.

16 forth in subsection 3 of section 8.250. The selection and award shall follow sections 67.5050
17 and 67.5060, as applicable.

67.5050. 1. As used in this section, the following terms mean:

2 (1) "Construction manager", the legal entity that proposes to enter into a construction
3 ~~[management-at-risk]~~ **manager-at-risk** contract under this section;

4 (2) "Construction manager-at-risk", a sole proprietorship, partnership, corporation, or
5 other legal entity that assumes the risk for the construction, rehabilitation, alteration, or repair
6 of a project at the contracted price as a general contractor and provides consultation to a
7 political subdivision regarding construction during and after the design of the project.

8 2. Any political subdivision may use the construction manager-at-risk method for:
9 civil works projects such as roads, streets, bridges, utilities, water supply projects, water
10 plants, wastewater plants, water distribution and wastewater conveyance facilities, airport
11 runways and taxiways, storm drainage and flood control projects, or transit projects
12 commonly designed by professional engineers in excess of two million dollars; and noncivil
13 works projects such as buildings, site improvements, and other structures, habitable or not,
14 commonly designed by architects in excess of three million dollars. In using that method and
15 in entering into a contract for the services of a construction manager-at-risk, the political
16 subdivision shall follow the procedures prescribed by this section.

17 3. The political subdivision shall publicly disclose at a regular meeting its intent to
18 utilize the construction ~~[management-at-risk]~~ **manager-at-risk** method and its selection
19 criteria at least one week prior to publishing the request for qualifications. Before or
20 concurrently with selecting a construction manager-at-risk, the political subdivision shall
21 select or designate an engineer or architect who shall prepare the construction documents for
22 the project and who shall comply with all state laws, as applicable. If the engineer or
23 architect is not a full-time employee of the political subdivision, the political subdivision shall
24 select the engineer or architect on the basis of demonstrated competence and qualifications as
25 provided by sections 8.285 to 8.291. The political subdivision's engineer or architect for a
26 project may not serve, alone or in combination with another, as the construction manager-at-
27 risk. This subsection does not prohibit a political subdivision's engineer or architect from
28 providing customary construction phase services under the engineer's or architect's original
29 professional service agreement in 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,
32 engineering, and verification of testing services necessary for acceptance of the project by
33 the political 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
40 selection criteria in the request for proposals or qualifications, as applicable. The selection
41 criteria may include the construction manager's experience, past performance, safety record,
42 proposed personnel and methodology, and other appropriate factors that demonstrate the
43 capability of the construction manager-at-risk. The political subdivision shall not request fees
44 or prices in step one. In step two, the political subdivision may request that five or fewer
45 construction managers, selected solely on the basis of qualifications, provide additional
46 information, including the construction manager-at-risk's proposed fee and its price for
47 fulfilling the general conditions. Qualifications shall account for a minimum of forty percent
48 of the evaluation. Cost shall account 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
52 or qualifications submissions or by a virtual notice procedure that notifies interested parties
53 for at least twenty various purchases, design contracts, construction contracts, or other
54 contracts each year for the political subdivision.

55 7. For each step, the political subdivision shall receive, publicly open, and read aloud
56 the 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
59 criteria set forth in the request for proposals or request for qualifications. The political
60 subdivision shall interview at least two of the top qualified offerors as part of the final
61 selection.

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

71 9. A construction manager-at-risk shall publicly advertise, in the manner prescribed
72 by chapter 50, and receive bids or proposals from trade contractors or subcontractors for the

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

82 10. The construction manager-at-risk and the political subdivision or its
83 representative shall review all trade contractor, subcontractor, or construction manager-at-
84 risk bids or proposals in a manner that does not disclose the contents of the bid or proposal
85 during the selection process to a person not employed by the construction manager-at-risk,
86 engineer, architect, or political subdivision involved with the project. If the construction
87 manager-at-risk submitted bids or proposals, the political subdivision shall determine if the
88 construction manager-at-risk's bid or proposal offers the best value for the political
89 subdivision. After all proposals have been evaluated and clarified, the award of all
90 subcontracts shall be made public.

91 11. If the construction manager-at-risk reviews, evaluates, and recommends to the
92 political subdivision a bid or proposal from a trade contractor or subcontractor but the
93 political subdivision requires another bid or proposal to be accepted, the political subdivision
94 shall compensate the construction manager-at-risk by a change in price, time, or guaranteed
95 maximum cost for any additional cost and risk that the construction manager-at-risk may
96 incur because of the political subdivision's requirement that another bid or proposal be
97 accepted.

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

107 13. Any political subdivision engaged in a project under this section, which impacts a
108 railroad regulated by the Federal Railroad Administration, shall consult with the affected

109 railroad on required specifications relating to clearance, safety, insurance, and
110 indemnification to be included in the construction documents for such project.

111 14. This section shall not apply to:

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

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

117 ~~[15. Notwithstanding the provisions of section 23.253 to the contrary, the provisions~~
118 ~~of this section shall expire September 1, 2026.]~~

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

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

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

10 (3) "Design-build project", the design, construction, alteration, addition, remodeling,
11 or improvement of any buildings or facilities under contract with a political subdivision.
12 Such 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
16 structures, habitable or not, commonly designed by architects in excess of seven million
17 dollars;

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

26 (5) "Design criteria consultant", a person, corporation, partnership, or other legal
27 entity duly licensed and authorized to practice architecture or professional engineering in this

28 state under chapter 327 who is employed by or contracted by the political subdivision to assist
29 the political subdivision in the development of project design criteria, requests for proposals,
30 evaluation of proposals, the evaluation of the construction under a design-build contract to
31 determine adherence to the design criteria, and any additional services requested by the
32 political ~~[subdivisions]~~ **subdivision** to represent its interests in relation to a project. The
33 design criteria consultant may not submit a proposal or furnish design or construction services
34 for the design-build contract for which its services were sought;

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

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

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

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

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

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

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

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

60 3. A design criteria consultant shall be employed or retained by the political
61 subdivision to assist in preparation of the design criteria package and request for proposal,
62 perform periodic site visits to observe adherence to the design criteria, prepare progress
63 reports, review and approve progress and final pay applications of the design-builder, review
64 shop drawings and submissions, provide input in disputes, help interpret the construction

65 documents, perform inspections upon substantial and final completion, assist in warranty
66 inspections, and provide any other professional service assisting with the project
67 administration. The design criteria consultant may also evaluate construction as to the
68 adherence of the design criteria. The consultant shall be selected and its contract negotiated
69 in compliance with sections 8.285 to 8.291 unless the consultant is a direct employee of the
70 political subdivision.

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

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

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

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

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

89 (3) The design criteria package;

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

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

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

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

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

99 (9) Any other information that the political subdivision in its discretion chooses to
100 supply including, but not limited to, surveys, soil reports, drawings of existing structures,

101 environmental studies, photographs, references to public records, or affirmative action and
102 minority business enterprise requirements consistent with state and federal law.

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

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

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

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

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

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

118 (4) The names and qualifications of the primary design consultants and the primary
119 trade contractors with whom the design-builder proposes to subcontract or joint venture. The
120 design-builder may not replace an identified contractor, subcontractor, design consultant, or
121 subconsultant without the written approval of the political subdivision.

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

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

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

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

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

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

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

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

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

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

157 14. Phase III shall be conducted as follows:

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

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

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

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

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

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

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

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

197 16. (1) As used in this subsection, "wastewater or water contract" means any design-
198 build contract that involves the provision of engineering and construction services either
199 directly by a party to the contract or through subcontractors retained by a party to the contract
200 for a wastewater or water storage, conveyance, or treatment facility project.

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

203 (3) In disbursing community development block grants under 42 U.S.C. Sections
204 5301 to 5321, the department of economic development shall not reject wastewater or water
205 projects solely for utilizing wastewater or water contracts.

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

209 (5) A political subdivision planning a wastewater or water design-build project shall
210 retain an engineer duly licensed in this state to assist in preparing any necessary documents
211 and specifications and evaluations of design-build proposals.

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

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

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

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

231 21. This section shall not apply to:

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

234 (2) Any special charter city, or any city or county governed by home rule under
235 Article VI, ~~[Section 18]~~ **Sections 18(a) to 18(r)** or **Section 19** of the Constitution of Missouri
236 that has adopted a design-build process via ordinance, rule, or regulation.

237 ~~[22. The authority to use design-build and design-build contracts provided under this~~
238 ~~section shall expire September 1, 2026.]~~

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