

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2474
103RD GENERAL ASSEMBLY

5233H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 67.5060, RSMo, and to enact in lieu thereof one new section relating to design-build contracts.

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

Section A. Section 67.5060, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 67.5060, to read as follows:

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

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

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (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 **or a progressive design-build**
21 **contract** in which services within the scope of the practice of professional architecture or
22 engineering are performed respectively by a licensed architect or licensed engineer and in
23 which services within the scope of general contracting are performed by a general contractor
24 or other legal entity that furnishes architecture or engineering services and construction
25 services either directly or through 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 **or a**
31 **progressive design-build contract** to determine adherence to the design criteria, and any
32 additional services requested by the political subdivision to represent its interests in relation
33 to a project. The design criteria consultant may not submit a proposal or furnish design or
34 construction services 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 **or a**
38 **progressive design-build project**, which may include capacity, durability, standards, ingress
39 and egress requirements, performance requirements, description of the site, surveys, soil and
40 environmental information concerning the site, interior space requirements, material quality
41 standards, design and construction schedules, site development requirements, provisions for
42 utilities, storm water retention and disposal, parking requirements, applicable governmental
43 code requirements, preliminary designs for the project or portions thereof, and other criteria
44 for the intended use of the 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) "**Progressive design-build contract**", a contract that is subject to a two-stage
51 **qualification-based selection process as described in subdivision (1) of subsection 13 of**
52 **this section between a political subdivision and a design-builder to furnish the**
53 **architectural, engineering, and related design services and the labor, materials, supplies,**

54 **equipment, and other construction services required for a progressive design-build**
55 **project;**

56 (9) "Progressive design-build project", the design, construction, alteration,
57 addition, remodeling, or improvement of any buildings or facilities under one
58 progressive design-build contract with a political subdivision. Such progressive
59 design-build projects include, but are not limited to:

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

62 (b) Noncivil works projects, such as buildings, site improvements, and other
63 structures, habitable or not, commonly designed by architects;

64 (10) "Proposal", an offer in response to a request for proposals by a design-builder to
65 enter into a design-build contract for a design-build project **or a progressive design-build**
66 **contract for a progressive design-build project** under this section;

67 ~~[(9)]~~ (11) "Request for proposal", the document by which the political subdivision
68 solicits proposals for a design-build contract **or a progressive design-build contract**;

69 ~~[(10)]~~ (12) "Stipend", an amount paid to the unsuccessful but responsive, short-listed
70 design-builders to defray the cost of participating in phase II of the selection process **for a**
71 **design-build project** described in this section.

72 2. In using a design-build contract **or a progressive design-build contract**, the
73 political subdivision shall determine the scope and level of detail required to permit qualified
74 persons to submit proposals in accordance with the request for proposals given the nature of
75 the project.

76 3. A design criteria consultant ~~[shall]~~ **may** be employed or retained by the political
77 subdivision to assist in preparation of the design criteria package and request for proposal,
78 perform periodic site visits to observe adherence to the design criteria, prepare progress
79 reports, review and approve progress and final pay applications of the design-builder, review
80 shop drawings and submissions, provide input in disputes, help interpret the construction
81 documents, perform inspections upon substantial and final completion, assist in warranty
82 inspections, and provide any other professional service assisting with the project
83 administration **of a design-build project or a progressive design-build project**. The
84 design criteria consultant may also evaluate construction as to the adherence of the design
85 criteria. The consultant shall be selected and its contract negotiated in compliance with
86 sections 8.285 to 8.291 unless the consultant is a direct employee of the political subdivision.

87 4. The political subdivision shall publicly disclose at a regular meeting its intent to
88 utilize the design-build method **or the progressive design-build method** and its project
89 design criteria at least one week prior to publishing the request for proposals. Notice of
90 requests for proposals shall be advertised by publication in a newspaper of general circulation

91 published in the county where the political subdivision is located once a week for two
92 consecutive weeks prior to opening the proposals, or by a virtual notice procedure that
93 notifies interested parties for at least twenty various purchases, design contracts, construction
94 contracts, or other contracts each year for the political subdivision. The political subdivision
95 shall publish a notice of a request for proposal with a description of the project, the
96 procedures for submission, and the selection criteria to be used.

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

100 6. **The following provisions of this subsection shall apply to a design-build**
101 **project:**

102 (1) A request for proposal shall be prepared for each design-build contract containing
103 at minimum the following elements:

104 ~~[(1)]~~ (a) The procedures to be followed for submitting proposals, the criteria for
105 evaluating proposals and their relative weight, and the procedures for making awards;

106 ~~[(2)]~~ (b) The proposed terms and conditions for the design-build contract, if available;

107 ~~[(3)]~~ (c) The design criteria package;

108 ~~[(4)]~~ (d) A description of the drawings, specifications, or other information to be
109 submitted with the proposal, with guidance as to the form and level of completeness of the
110 drawings, specifications, or other information that will be acceptable;

111 ~~[(5)]~~ (e) A schedule for planned commencement and completion of the design-build
112 contract, if any;

113 ~~[(6)]~~ (f) Budget limits for the design-build contract, if any;

114 ~~[(7)]~~ (g) Requirements including any available ratings for performance bonds,
115 payment bonds, and insurance, if any;

116 ~~[(8)]~~ (h) The amount of the stipend which will be available; and

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

121 ~~[(7)]~~ (2) The political subdivision shall solicit proposals in a three-stage process.
122 Phase I shall be the solicitation of qualifications of the design-build team. Phase II shall be
123 the solicitation of a technical proposal including conceptual design for the project. Phase III
124 shall be the proposal of the construction cost.

125 ~~[(8)]~~ (3) The political subdivision shall review the submissions of the proposals and
126 assign points to each proposal in accordance with this section and as set out in the instructions
127 of the request for proposal.

128 ~~[9-]~~ **(4)** Phase I shall require all design-builders to submit a statement of qualification
129 that shall include, but not be limited to:

130 ~~[(1)]~~ **(a)** Demonstrated ability to perform projects comparable in design, scope, and
131 complexity;

132 ~~[(2)]~~ **(b)** References of owners for whom design-build projects, construction projects,
133 or design projects have been performed;

134 ~~[(3)]~~ **(c)** Qualifications of personnel who will manage the design and construction
135 aspects of the project; and

136 ~~[(4)]~~ **(d)** The names and qualifications of the primary design consultants and the
137 primary trade contractors with whom the design-builder proposes to subcontract or joint
138 venture. The design-builder shall not replace an identified contractor, subcontractor, design
139 consultant, or subconsultant without the written approval of the political subdivision.

140 ~~[10-]~~ **7.** The political subdivision shall evaluate the qualifications of all the design-
141 builders who submitted proposals in accordance with the instructions of the request for
142 proposal. Architectural and engineering services on the project shall be evaluated in
143 accordance with the requirements of sections 8.285 and 8.291. Qualified design-builders
144 selected by the evaluation team may proceed to phase II of the selection process. Design-
145 builders lacking the necessary qualifications to perform the work shall be disqualified and
146 shall not proceed to phase II of the process. This process of short listing shall narrow the
147 number of qualified design-builders to not more than ~~[five]~~ **three** nor fewer than two. Under
148 no circumstances shall price or fees be a part of the prequalification criteria. Design-builders
149 may be interviewed in either phase I or phase II of the process. Points assigned in phase I of
150 the evaluation process shall not carry forward to phase II of the process. All qualified design-
151 builders shall be ranked on points given in phases II and III only.

152 ~~[(1)]~~ **8.** The political subdivision shall have discretion to disqualify any design-
153 builder who, in the political subdivision's opinion, lacks the minimum qualifications required
154 to perform the work.

155 ~~[12-]~~ **9.** Once a sufficient number of no more than ~~[five]~~ **three** and no fewer than two
156 qualified design-builders have been selected, the design-builders shall have a specified
157 amount of time in which to assemble phase II and phase III proposals.

158 ~~[13-]~~ **10.** Phase II of the process shall be conducted as follows:

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

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

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

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

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

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

175 ~~[14.]~~ **11.** Phase III shall be conducted as follows:

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

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

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

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

196 (5) If the political subdivision determines that it is not in the best interest of the
197 political subdivision to proceed with the project pursuant to the proposal offered by the
198 design-builder with the highest total number of points, the political subdivision shall reject all
199 proposals. In this event, all qualified and responsive design-builders with lower point totals
200 shall receive a stipend and the responsive design-builder with the highest total number of

201 points shall receive an amount equal to two times the stipend. If the political subdivision
202 decides to award the project, the responsive design-builder with the highest number of points
203 shall be awarded the contract; and

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

206 ~~[15-]~~ **12.** As an inducement to qualified design-builders, the political subdivision shall
207 pay a reasonable stipend, the amount of which shall be established in the request for proposal,
208 to each prequalified design-builder whose proposal is responsive but not accepted. Such
209 stipend shall be no less than one-half of one percent of the total project budget. Upon
210 payment of the stipend to any unsuccessful design-builder, the political subdivision shall
211 acquire a nonexclusive right to use the design submitted by the design-builder, and the
212 design-builder shall have no further liability for the use of the design by the political
213 subdivision in any manner. If the design-builder desires to retain all rights and interest in the
214 design proposed, the design-builder shall forfeit the stipend.

215 **13. The following provisions of this subsection shall apply to a progressive**
216 **design-build project:**

217 **(1) A request for proposal shall be prepared for each progressive design-build**
218 **contract, containing at a minimum the following elements:**

219 **(a) The procedures to be followed for submitting proposals, the criteria for**
220 **evaluating proposals and their relative weight, and the procedures for making awards;**

221 **(b) The proposed terms and conditions for the progressive design-build contract,**
222 **if available;**

223 **(c) The design criteria package;**

224 **(d) A description of the project approach elements, or other information to be**
225 **submitted with the proposal, or other information that will be acceptable;**

226 **(e) A schedule for planned commencement and completion of the progressive**
227 **design-build contract, if any;**

228 **(f) Budget limits for the progressive design-build contract, if any;**

229 **(g) Requirements including any available ratings for performance bonds,**
230 **payment bonds, and insurance, if any; and**

231 **(h) Any other information that the political subdivision in its discretion chooses**
232 **to supply including, but not limited to, surveys, soil reports, drawings of existing**
233 **structures, environmental studies, photographs, references to public records, or**
234 **affirmative action and minority business enterprise requirements consistent with state**
235 **and federal law.**

236 **(2) The political subdivision shall solicit proposals in a two-stage process. Phase**
237 **I shall be the solicitation and evaluation of the qualifications of design-builders. Phase**

238 **II shall be the solicitation and evaluation of proposals describing the design-builder's**
239 **approach to design development, preconstruction services, and construction of the**
240 **project.**

241 **(3) The political subdivision shall review the submissions of the proposals and**
242 **assign points to each proposal in accordance with this section and as set out in the**
243 **instructions of the request for proposal.**

244 **(4) Phase I shall require all design-builders to submit a statement of**
245 **qualification that shall include, but not be limited to:**

246 **(a) Demonstrated ability to perform projects comparable in design, scope, and**
247 **complexity;**

248 **(b) References of owners for whom design-build projects or progressive design-**
249 **build projects, construction projects, or design projects have been performed;**

250 **(c) Qualifications of personnel who will manage the design and construction**
251 **aspects of the project; and**

252 **(d) The names and qualifications of the primary design consultants and the**
253 **primary trade contractors with whom the design-builder proposes to joint venture. The**
254 **design-builder shall not replace an identified contractor or design consultant without**
255 **the written approval of the political subdivision.**

256 **(5) The political subdivision shall evaluate the qualifications of all the design-**
257 **builders who submitted proposals in accordance with the instructions of the request for**
258 **proposal. Architectural and engineering services on the project shall be evaluated in**
259 **accordance with the requirements of sections 8.285 and 8.291. Qualified design-builders**
260 **selected by the evaluation team may proceed to phase II of the selection**
261 **process. Design-builders lacking the necessary qualifications to perform the work**
262 **shall be disqualified and shall not proceed to phase II of the process. This process of**
263 **short-listing shall narrow the number of qualified design-builders to not more than**
264 **three but not less than two. Under no circumstances shall price or fees be a part of the**
265 **prequalification criteria. Design-builders may be interviewed in either phase I or phase**
266 **II of the process. Points assigned in phase I of the evaluation process shall not carry**
267 **forward to phase II of the process. All qualified design-builders shall be ranked on**
268 **points given in phase II only.**

269 **(6) The political subdivision shall have discretion to disqualify any design-**
270 **builder who, in the political subdivision's opinion, lacks the minimum qualifications**
271 **required to perform the work.**

272 **(7) Once a sufficient number of no more than three but not less than two**
273 **qualified design-builders have been selected, the design-builders shall have a specified**
274 **amount of time in which to assemble phase II proposals.**

275 (8) Phase II of the process shall be conducted as follows:

276 (a) The political subdivision shall invite the top qualified design-builders to
277 participate in phase II of the process;

278 (b) Each invited design-builder shall submit a proposal describing its approach
279 to design development, collaboration with the political subdivision, and delivery of
280 preconstruction and construction services. The proposal shall not include any
281 construction pricing;

282 (c) The proposal shall demonstrate understanding of the project goals and may
283 address:

284 a. Approach to design integration, cost estimating, scheduling, and value
285 engineering during preconstruction;

286 b. Approach to subcontractor outreach, selection, and participation;

287 c. Approach to establishing transparent pricing for the preconstruction and
288 construction phase; and

289 d. Any innovations, sustainability measures, or risk-management strategies
290 proposed for the project;

291 (d) Evaluation of Phase II proposals shall be qualifications-based. Price
292 consideration shall be for preconstruction phase services only and may be in the form of
293 proposed rates, fees, or other acceptable forms as determined by the political
294 subdivision;

295 (e) The political subdivision shall rank the Phase II proposals according to the
296 criteria and weighting established in the request for proposals and may conduct
297 interviews as part of the evaluation;

298 (f) Following evaluation, the political subdivision may enter into negotiations
299 with the highest-ranked design-builder to establish a preconstruction services
300 agreement. If the parties are unable to reach an agreement, the political subdivision
301 may terminate negotiations and commence negotiations with the next highest-ranked
302 design-builder; and

303 (g) During the preconstruction phase, the design-builder and the political
304 subdivision shall collaborate to advance the design to a level sufficient to establish a
305 fixed contract amount or guaranteed maximum price, consistent with agreed-upon
306 milestones and deliverables. Upon acceptance of the price and contract terms, the
307 parties may amend the contract to authorize construction.

308 [46-] 14. (1) As used in this subsection, "wastewater or water contract" means any
309 design-build contract or progressive design-build contract that involves the provision of
310 engineering and construction services either directly by a party to the contract or through

311 subcontractors retained by a party to the contract for a wastewater or water storage,
312 conveyance, or treatment facility project.

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

315 (3) In disbursing community development block grants under 42 U.S.C. Sections
316 5301 to 5321, the department of economic development shall not reject wastewater or water
317 projects solely for utilizing wastewater or water contracts.

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

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

325 ~~[47.]~~ **15.** The payment bond requirements of section 107.170 shall apply to ~~[the]~~
326 design-build ~~[project]~~ **projects and progressive design-build projects.** All persons
327 furnishing design services shall be deemed to be covered by the payment bond the same as
328 any person furnishing labor and materials. The performance bond for the design-builder shall
329 not cover any damages of the type specified to be covered by the professional liability
330 insurance established by the political subdivision in the request for proposals.

331 ~~[48.]~~ **16.** Any person or firm performing architectural, engineering, landscape
332 architecture, or land-surveying services for the design-builder on the design-build project **or**
333 **progressive design-build project** shall be duly licensed or authorized in this state to provide
334 such services as required by chapter 327.

335 ~~[49.]~~ **17.** Any political subdivision engaged in a project under this section which
336 impacts a railroad regulated by the Federal Railroad Administration shall consult with the
337 affected railroad on required specifications relating to clearance, safety, insurance, and
338 indemnification to be included in the construction documents for such project.

339 ~~[20.]~~ **18.** Under section 327.465, any design-builder that enters into a design-build
340 contract **or progressive design-build contract** with a political subdivision is exempt from
341 the requirement that such person or entity hold a license or that such corporation hold a
342 certificate of authority if the architectural, engineering, or land-surveying services to be
343 performed under the design-build contract are performed through subcontracts or joint
344 ventures with properly licensed or authorized persons or entities, and not performed by the
345 design-builder or its own employees.

346 ~~[21.]~~ **19.** This section shall not apply to:

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

349 (2) Any special charter city, or any city or county governed by home rule under
350 Article VI, Sections 18(a) to 18(r) or 19 of the Constitution of Missouri that has adopted a
351 design-build process **or progressive design-build process** via ordinance, rule, or regulation.

✓