

# SENATE BILL NO. 758

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

3896S.02I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 8.250, 8.260, 8.675, 8.677, 8.679, 34.055, 34.057, 34.058, 34.100, 34.203, 34.206, 34.209, 34.212, 34.217, and 34.218, RSMo, and to enact in lieu thereof fifteen new sections relating to public contracts.

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

Section A. Sections 8.250, 8.260, 8.675, 8.677, 8.679,  
2 34.055, 34.057, 34.058, 34.100, 34.203, 34.206, 34.209, 34.212,  
3 34.217, and 34.218, RSMo, are repealed and fifteen new sections  
4 enacted in lieu thereof, to be known as sections 8.250, 8.260,  
5 8.675, 8.677, 8.679, 8.960, 8.962, 8.964, 8.966, 8.968, 8.970,  
6 8.972, 8.974, 34.055, and 34.100, to read as follows:

8.250. 1. "Project" for the purposes of this chapter  
2 means the labor or material necessary for the construction,  
3 renovation, or repair of improvements to real property so  
4 that the work, when complete, shall be ready for service for  
5 its intended purpose and shall require no other work to be a  
6 completed system or component.

2. All contracts for projects, the cost of which  
8 exceeds twenty-five thousand dollars, entered into by any  
9 city containing five hundred thousand inhabitants or more  
10 shall be let to the lowest, responsive, responsible bidder  
11 or bidders after notice and publication of an advertisement  
12 for five days in a daily newspaper in the county where the  
13 work is located, or at least twice over a period of ten days  
14 or more in a newspaper in the county where the work is

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 located, and in two daily newspapers in the state which do  
16 not have less than fifty thousand daily circulation, and by  
17 such other means as are determined to be most likely to  
18 reach potential bidders.

19 3. All contracts for projects, the cost of which  
20 exceeds one hundred thousand dollars, entered into by an  
21 officer or agency of this state shall be let to the lowest,  
22 responsive, responsible bidder or bidders based on  
23 preestablished criteria after [notice and] publication of an  
24 [advertisement] **invitation to bid** for [five days in a daily  
25 newspaper in the county where the work is located, or at  
26 least twice over] a period of ten days or more [in a  
27 newspaper in the county where the work is located and in one  
28 daily newspaper in the state which does not have less than  
29 fifty thousand daily circulation and by such other means as  
30 determined to be most likely to reach potential bidders] **on**  
31 **the website of the officer or agency or through an**  
32 **electronic procurement system.** For all contracts for  
33 projects between twenty-five thousand dollars and one  
34 hundred thousand dollars, a minimum of three contractors  
35 shall be solicited with the award being made to the lowest  
36 responsive, responsible bidder based on preestablished  
37 criteria.

38 4. The number of such public bids shall not be  
39 restricted or curtailed, but shall be open to all persons  
40 complying with the terms upon which the bids are requested  
41 or solicited unless debarred for cause. No contract shall  
42 be awarded when the amount appropriated for same is not  
43 sufficient to complete the work ready for service.

44 5. Dividing a project into component labor or material  
45 allocations for the purpose of avoiding bidding or

46 advertising provisions required by this section is  
47 specifically prohibited.

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

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

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

14 (3) In order to guarantee completion of the contract,  
15 the agency or officer shall retain a portion of the contract  
16 value in accordance with the provisions of section [34.057]  
17 **8.960;**

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

23 In no case shall the amount contracted for exceed the amount  
24 appropriated by the general assembly for the purpose.

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

3 (1) "Construction [management] **management-as-agent**  
4 services" includes:

5           (a) Services provided in the planning and design  
6 phases of the project including, but not limited to,  
7 consulting with, advising, assisting and making  
8 recommendations to the public owner and architect, engineer  
9 or registered landscape architect on all aspects of planning  
10 for project construction; reviewing all plans and  
11 specifications as they are being developed and making  
12 recommendations with respect to construction feasibility,  
13 availability of material and labor, time requirements for  
14 procurement and construction, and projected costs; making,  
15 reviewing and refining budget estimates based on the public  
16 owner's program and other available information; making  
17 recommendations to the public owner and the architect or  
18 engineer regarding the division of work in the plans and  
19 specifications to facilitate the bidding and awarding of  
20 contracts; soliciting the interest of capable contractors  
21 and assisting the owner in taking bids on the project;  
22 analyzing the bids received and awarding contracts; and  
23 preparing and monitoring a progress schedule during the  
24 design phase of the project and preparation of a proposed  
25 construction schedule; and

26           (b) Services provided in the construction phase of the  
27 project including, but not limited to, maintaining competent  
28 supervisory staff to coordinate and provide general  
29 direction of the work and progress of the contractors on the  
30 project; observing the work as it is being performed for  
31 general conformance with working drawings and  
32 specifications; establishing procedures for coordinating  
33 among the public owner, architect or engineer, contractors  
34 and construction **[manager] manager-as-agent** with respect to  
35 all aspects of the project and implementing such procedures;  
36 maintaining job site records and making appropriate progress

37 reports; implementing labor policy in conformance with the  
38 requirements of the public owner; reviewing the safety and  
39 equal opportunity programs of each contractor for  
40 conformance with the public owner's policy and making  
41 recommendations; reviewing and processing all applications  
42 for payment by involved contractors and material suppliers  
43 in accordance with the terms of the contract; making  
44 recommendations for and processing requests for changes in  
45 the work and maintaining records of change orders;  
46 scheduling and conducting job meetings to ensure orderly  
47 progress of the work; developing and monitoring a project  
48 progress schedule, coordinating and expediting the work of  
49 all contractors and providing periodic status reports to the  
50 owner and the architect or engineer; and, establishing and  
51 maintaining a cost control system and conducting meetings to  
52 review costs. **"Construction management-as-agent services"**  
53 **does not include services provided by a construction manager-**  
54 **at-risk as defined in section 8.677;**

55 (2) "Construction [manager] manager-as-agent", any  
56 person **partnership, corporation, or other legal entity**  
57 providing construction [management] **management-as-agent**  
58 services for a public owner. **"Construction manager-as-**  
59 **agent" does not include a construction manager-at-risk as**  
60 **defined in section 8.677;**

61 (3) "Public owner", any public body, as defined in  
62 section 290.210, **authorized by statute to contract for**  
63 **design and construction services. This term shall not**  
64 **include a public body that is subject to another applicable**  
65 **statute regarding the procurement of a construction**  
66 **management-as-agent contract outside of this section.**

67 2. The appropriate officer, board, or agency of a  
68 public owner may elect to engage the services of a

69 construction manager-as-agent when planning, designing, and  
70 constructing a building or structure or when improving,  
71 altering, or repairing a building or structure.

72 Construction management-as-agent services may be used by the  
73 public owner in the preconstruction phase or the  
74 construction phase of a public works project or both.

75 3. When, in the discretion of the public owner, it is  
76 determined that a public works project shall be performed  
77 with a negotiated contract for construction management-as-  
78 agent services, such public owner shall solicit proposals  
79 from qualified construction managers-as-agent by publishing  
80 a request for proposals for a period of ten or more days on  
81 the website of the public owner or through an electronic  
82 procurement system. The number of such proposals shall not  
83 be restricted or curtailed but shall be open to all  
84 construction managers-as-agent complying with the terms upon  
85 which the proposals are requested.

86 4. When selecting a construction manager-as-agent for  
87 a project, the public owner shall consider the following:

- 88 (1) Fees for overhead and profit;
- 89 (2) Costs for reimbursable items as defined in the  
90 public owner's request for proposal;
- 91 (3) Qualifications;
- 92 (4) Demonstration of ability to perform projects  
93 comparable in design, scope, and complexity;
- 94 (5) Demonstration of good faith efforts to achieve  
95 compliance with federal, state, and local affirmative action  
96 requirements;
- 97 (6) References from owners for whom construction  
98 management has been performed;
- 99 (7) Financial strength;

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

102           (9) Demonstration of successful management systems  
103 employed for the purposes of estimating, scheduling, and  
104 cost controls.

105           5. The public owner may negotiate a contract for  
106 construction management-as-agent services with any  
107 construction manager-as-agent selected according to the  
108 criteria of this section. If the public owner is unable to  
109 negotiate a contract for the type of services required with  
110 any of the construction managers-as-agent selected for a  
111 project at a price determined by the public owner to be fair  
112 and reasonable, the public owner shall reevaluate the  
113 necessary construction management-as-agent services,  
114 including the scope and reasonable fee requirements, and  
115 again solicit proposals from construction managers-as-agent  
116 complying with the terms of the revised requests for  
117 proposal.

118           6. Upon award of a construction management-as-agent  
119 services contract, the successful construction manager-as-  
120 agent shall contract with the public owner to furnish his or  
121 her skill and judgment in cooperation with, and reliance  
122 upon, the services of the project architect or engineer.  
123 The construction manager-as-agent shall furnish the business  
124 administration, management of the construction process, and  
125 other specified services to the public owner and shall  
126 perform in an expeditious and economical manner consistent  
127 with the interest of the public owner. If the public owner  
128 determines it to be in the public's best interest, the  
129 construction manager-as-agent may provide or perform basic  
130 services for which reimbursement is provided in the general  
131 conditions to the construction management-as-agent services

132 contract. The construction manager-as-agent shall not be  
133 permitted to bid on or perform any of the actual  
134 construction on a public works project in which he or she is  
135 acting as construction manager-as-agent, nor shall any  
136 construction firm that controls, is controlled by, or shares  
137 common ownership or control with the construction manager-as-  
138 agent be allowed to bid on or perform work on such project.  
139 The actual construction work on the project shall be awarded  
140 by competitive bidding as provided by law. All successful  
141 bidders shall contract directly with the public owner but  
142 shall perform at the direction of the construction manager-  
143 as-agent unless otherwise provided in the contract between  
144 the construction manager-as-agent and the public owner. All  
145 successful bidders shall provide payment and performance  
146 bonds to the public owner. All successful bidders shall  
147 meet all obligations of a prime contractor to whom a  
148 contract is awarded, pertaining to the payment of wages  
149 under sections 290.210 to 290.340. In addition, all  
150 nonresident employers shall meet the bonding and  
151 registration requirements of sections 285.230 to 285.234.

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



163 for construction management-at-risk services in section  
164 8.677, if applicable.

165 8. (1) A construction manager-as-agent shall not be  
166 deemed a contractor for the purposes of section 107.170.

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

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

10 (1) "Construction manager-at-risk", a person,  
11 partnership, corporation, or other legal entity that enters  
12 into or proposes to enter into a construction management-at-  
13 risk contract pursuant to this section;

14 (2) "Construction management-at-risk", a contractual  
15 arrangement where the construction manager-at-risk assumes  
16 the risk for the construction, rehabilitation, alteration,  
17 or repair of a project at the contracted price as a general  
18 contractor and provides consultation to a public owner  
19 regarding construction during and after the design of the  
20 project;

21 (3) "Public owner", any public body, as defined in  
22 section 290.210, authorized by statute to contract for  
23 design and construction services. This term shall not  
24 include a public body who is subject to another applicable

25 statute regarding the procurement of a construction  
26 management-at-risk contract outside of this section.

27 2. The public owner may use the construction manager-  
28 at-risk method for any project within its authority in  
29 excess of three hundred thousand dollars. In using that  
30 method and in entering into a contract for the services of a  
31 construction manager-at-risk, the public owner shall follow  
32 the procedures prescribed by this section.

33 3. Before or concurrently with selecting a  
34 construction manager-at-risk, the public owner shall select  
35 or designate an engineer or architect who shall prepare the  
36 construction documents for the project and who shall comply  
37 with all state laws, as applicable. If the engineer or  
38 architect is not a full-time employee of the public owner,  
39 the public owner shall select the engineer or architect on  
40 the basis of demonstrated competence and qualifications as  
41 provided by sections 8.285 to 8.291. The public owner's  
42 engineer or architect for a project shall not serve, alone  
43 or in combination with another, as the construction manager-  
44 at-risk. This subsection does not prohibit the public  
45 owner's engineer or architect from providing customary  
46 construction phase services under the engineer's or  
47 architect's original professional service agreement in  
48 accordance with applicable licensing laws.

49 4. The public owner may provide or contract for,  
50 independently of the construction manager-at-risk,  
51 inspection services, testing of construction materials,  
52 engineering, and verification of testing services necessary  
53 for acceptance of the project by the public owner.

54 5. The public owner shall select the construction  
55 manager-at-risk using the following two-step process:

56           (1) The public owner shall prepare a request for  
57 qualifications that includes general information on the  
58 project site, project scope, schedule, selection criteria,  
59 the time and place for receipt of proposals or  
60 qualifications, as applicable, and other information that  
61 may assist the public owner in its selection of a  
62 construction manager-at-risk. The public owner shall state  
63 the selection criteria in the request for proposals or  
64 qualifications, as applicable. The selection criteria may  
65 include the construction manager's-at-risk experience, past  
66 performance, safety record, proposed personnel and  
67 methodology, and other appropriate factors that demonstrate  
68 the capability of the construction manager-at-risk. The  
69 public owner shall not request fees or prices in the first  
70 step. The public owner may select no more than five nor  
71 fewer than two construction managers-at-risk based on the  
72 stated selection criteria; and

73           (2) The public owner may request from each selected  
74 construction manager-at-risk its proposed fee, its price for  
75 fulfilling the general conditions, and other prices, fees,  
76 or costs deemed applicable by the public owner.  
77 Qualifications shall account for a minimum of forty percent  
78 of the evaluation. Cost shall account for a maximum of  
79 sixty percent of the evaluation.

80           6. The public owner shall publish the request for  
81 proposals or qualifications for a period of ten or more days  
82 on the website of the public owner or through an electronic  
83 procurement system.

84           7. For each step in subsection 5 of this section, the  
85 public owner shall receive and open the names and proposals  
86 or qualifications of the construction managers-at-risk at  
87 the date and time specified in the request for proposals or

88 qualifications. The names of the construction managers-at-  
89 risk shall be made publicly available. Within forty-five  
90 days after the date of opening the proposals or  
91 qualification submissions, the public owner or its  
92 representative shall evaluate and rank each proposal or  
93 qualification submission submitted in relation to the  
94 criteria set forth in the request for proposals or request  
95 for qualifications. The public owner shall interview at  
96 least two of the top qualified offerors as part of the final  
97 selection, provided there are two or more interested parties.

98 8. The public owner or its representative shall select  
99 the construction manager-at-risk whose proposal offers the  
100 best value for the public owner based on the published  
101 selection criteria and on its ranking evaluation. The  
102 public owner or its representative shall first attempt to  
103 negotiate a contract with the selected construction manager-  
104 at-risk. If the public owner or its representative is  
105 unable to negotiate a satisfactory contract with the  
106 selected construction manager-at-risk, the public owner or  
107 its representative shall, formally and in writing, end  
108 negotiations with that construction manager-at-risk and  
109 proceed to negotiate with the next construction manager-at-  
110 risk in the order of the selection ranking until a contract  
111 is reached or negotiations with all ranked construction  
112 managers-at-risk end.

113 9. The construction manager-at-risk may seek to  
114 perform portions of the work itself if the construction  
115 manager-at-risk submits its sealed bid or sealed proposal  
116 for the portions of the work in the same manner as all other  
117 trade contractors or subcontractors. A construction manager-  
118 at-risk shall publicly solicit and receive bids or proposals  
119 from trade contractors or subcontractors for the performance

120 of all major elements of the work. The construction manager-  
121 at-risk shall solicit bids from potential contractors or  
122 subcontractors by newspaper advertising, by posting a notice  
123 on the website of at least one construction trade industry  
124 association, or by other solicitation methods agreed to by  
125 the public owner that are likely to reach a substantial  
126 number of qualified contractors or subcontractors. All  
127 sealed bids or proposals shall be submitted at the time and  
128 location as specified in the solicitation for bids or  
129 proposals and shall be opened and the identity of each  
130 bidder and their bid amount shall be made publicly available  
131 within fourteen days.

132 10. The construction manager-at-risk and the public  
133 owner or its representative shall review all trade  
134 contractor, subcontractor, or construction manager-at-risk  
135 bids or proposals in a manner that does not disclose the  
136 contents of the bid or proposal during the selection process  
137 to a person not employed by the construction manager-at-  
138 risk, engineer, architect, or public owner involved with the  
139 project. After all proposals have been evaluated and  
140 clarified, the award of all subcontracts shall be made  
141 public.

142 11. If the construction manager-at-risk reviews,  
143 evaluates, and recommends to the public owner a bid or  
144 proposal from a trade contractor or subcontractor but the  
145 public owner requires another bid or proposal to be  
146 accepted, the public owner shall compensate the construction  
147 manager-at-risk by a change in price, time, or guaranteed  
148 maximum cost for any additional cost and risk that the  
149 construction manager-at-risk may incur because of the public  
150 owner's requirement that another bid or proposal be accepted.

151           12. If a selected trade contractor or subcontractor  
152 materially defaults in the performance of its work or fails  
153 to execute a subcontract after being selected in accordance  
154 with this section, the construction manager-at-risk may  
155 itself, without soliciting bids, fulfill the contract  
156 requirements or select a replacement trade contractor or  
157 subcontractor to fulfill the contract requirements. The  
158 penal sums of the performance and payment bonds delivered to  
159 the public owner shall each be in an amount equal to the  
160 fixed contract amount or guaranteed maximum price. The  
161 construction manager-at-risk shall deliver the bonds not  
162 later than the tenth day after the date the fixed contract  
163 amount or guaranteed maximum price is established.

          8.679. [When, in the discretion of the public owner,  
2 it is determined that a public works project should be  
3 performed with a negotiated contract for construction  
4 management services, such public owner shall advertise and  
5 solicit proposals from qualified construction managers in  
6 the following manner: If the total cost for the erection or  
7 construction of any building or structure or the  
8 improvement, alteration or repair of a building or structure  
9 exceeds five hundred thousand dollars, the public owner  
10 shall request and solicit proposals by advertising for ten  
11 days in one newspaper of general circulation in the county  
12 where the work is located. If the cost of the work  
13 contemplated exceeds one million five hundred thousand  
14 dollars, proposals shall be solicited by advertisement for  
15 ten days in two daily newspapers in the state which have not  
16 less than fifty thousand daily circulation in addition to  
17 the advertisement in the county where the work is located.  
18 The number of such proposals shall not be restricted or  
19 curtailed, but shall be open to all construction managers

20 complying with the terms upon which the proposals are  
21 requested.] 1. As used in this section, the following  
22 terms mean:

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

27 (2) "Design-build contract", a contract that is  
28 subject to a three-stage, qualifications-based selection  
29 process between the public owner and a design-builder to  
30 furnish the architectural, engineering, and related design  
31 services and the labor, materials, supplies, equipment, and  
32 other construction services required for a design-build  
33 project;

34 (3) "Design-build project", the design, construction,  
35 alteration, addition, remodeling, or improvement of any  
36 buildings or facilities under contract with the public  
37 owner. Such design-build projects include, but are not  
38 limited to:

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

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

45 (4) "Design-builder", any individual, partnership,  
46 joint venture, or corporation subject to a qualification-  
47 based selection that offers to provide or provides design  
48 services and general contracting services through a design-  
49 build contract in which services within the scope of the  
50 practice of professional architecture or engineering are  
51 performed respectively by a licensed architect or licensed

52 engineer and in which services within the scope of general  
53 contracting are performed by a general contractor or other  
54 legal entity that furnishes architecture or engineering  
55 services and construction services either directly or  
56 through subcontracts or joint ventures;

57 (5) "Design criteria consultant", a person,  
58 corporation, partnership, or other legal entity duly  
59 licensed and authorized to practice architecture or  
60 professional engineering in this state under chapter 327 who  
61 is employed by or contracted by the public owner to assist  
62 the public owner in the development of project design  
63 criteria, requests for proposals, evaluation of proposals,  
64 the evaluation of the construction under a design-build  
65 contract to determine adherence to the design criteria, and  
66 any additional services requested by the public owner to  
67 represent its interests in relation to a project. The  
68 design criteria consultant shall not submit a proposal or  
69 furnish design or construction services for the design-build  
70 contract for which its services were sought;

71 (6) "Design criteria package", a performance-oriented  
72 program, scope, and specifications for the design-build  
73 project sufficient to permit a design-builder to prepare a  
74 response to the public owner's request for proposals for a  
75 design-build project, which may include capacity,  
76 durability, standards, ingress and egress requirements,  
77 performance requirements, description of the site, surveys,  
78 soil and environmental information concerning the site,  
79 interior space requirements, material quality standards,  
80 design and construction schedules, site development  
81 requirements, provisions for utilities, storm water  
82 retention and disposal, parking requirements, applicable  
83 governmental code requirements, preliminary designs for the



84 project or portions thereof, and other criteria for the  
85 intended use of the project;

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

87 (a) Within the practice of architecture as defined in  
88 section 327.091 or within the practice of professional  
89 engineering as defined in section 327.181; or

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

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

96 (9) "Public owner", any public body, as defined in  
97 section 290.210, authorized by statute to contract for  
98 design and construction services. This term shall not  
99 include a public body that is subject to another applicable  
100 statute regarding the procurement of a design-build contract  
101 outside of this section;

102 (10) "Request for proposal", the document by which the  
103 public owner solicits proposals for a design-build contract;

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

108 2. A public owner may use the design-build method for  
109 any project within its authority in excess of three hundred  
110 thousand dollars. In using that method and in entering into  
111 a design-build contract, the public owner shall follow the  
112 procedures prescribed by this section. In using a design-  
113 build contract, the public owner shall determine the scope  
114 and level of detail required to permit qualified persons to

115 submit proposals in accordance with the request for  
116 proposals given the nature of the project.

117 3. A design criteria consultant shall be employed or  
118 retained by the public owner to assist in preparation of the  
119 design criteria package and request for proposal, perform  
120 periodic site visits to observe adherence to the design  
121 criteria, prepare progress reports, review and approve  
122 progress and final pay applications of the design-builder,  
123 review shop drawings and submissions, provide input in  
124 disputes, help interpret the construction documents, perform  
125 inspections upon substantial and final completion, assist in  
126 warranty inspections, and provide any other professional  
127 service assisting with the project administration. The  
128 design criteria consultant may also evaluate construction as  
129 to the adherence to the design criteria. The design  
130 criteria consultant shall be selected and its contract  
131 negotiated in compliance with sections 8.285 to 8.291 unless  
132 the consultant is a direct employee of the public owner.

133 4. The public owner shall publish the request for  
134 proposals for a period of ten or more days on the website of  
135 the public owner or through an electronic procurement system.

136 5. The public owner shall establish in the request for  
137 proposal a time, place, and other specific instructions for  
138 the receipt of proposals. Proposals not submitted in strict  
139 accordance with the instructions shall be subject to  
140 rejection.

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

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

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

149           (3) The design criteria package;

150           (4) A description of the drawings, specifications, or  
151 other information to be submitted with the proposal, with  
152 guidance as to the form and level of completeness of the  
153 drawings, specifications, or other information that will be  
154 acceptable;

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

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

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

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

163           (9) Any other information that the public owner in its  
164 discretion chooses to supply including, but not limited to,  
165 surveys, soil reports, drawings of existing structures,  
166 environmental studies, photographs, references to public  
167 records, or affirmative action and minority business  
168 enterprise requirements consistent with state and federal  
169 law.

170           7. The public owner shall solicit proposals in a three-  
171 phase process. Phase I shall be the solicitation of  
172 qualifications of the design-build team. Phase II shall be  
173 the solicitation of a technical proposal, including a  
174 conceptual design for the project. Phase III shall be the  
175 proposal of the construction cost.

176           8. The public owner shall review the submissions of  
177 the proposals and assign points to each proposal in

178 accordance with this section and as set out in the  
179 instructions of the request for proposal.

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

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

185 (2) References of owners for whom design-build  
186 projects, construction projects, or design projects have  
187 been performed;

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

190 (4) The names and qualifications of the primary design  
191 consultants and the primary trade contractors with whom the  
192 design-builder proposes to subcontract or joint venture.

193 The design-builder shall not replace an identified  
194 contractor, subcontractor, design consultant, or  
195 subconsultant without the written approval of the public  
196 owner.

197 10. The public owner shall evaluate the qualifications  
198 of all the design-builders who submitted proposals in  
199 accordance with the instructions of the request for  
200 proposal. Architectural and engineering services on the  
201 project shall be evaluated in accordance with the  
202 requirements of sections 8.285 and 8.291. Qualified design-  
203 builders selected by the evaluation team may proceed to  
204 phase II of the selection process. Design-builders lacking  
205 the necessary qualifications to perform the work shall be  
206 disqualified and shall not proceed to phase II of the  
207 process. This process of short listing shall narrow the  
208 number of qualified design-builders to not more than five  
209 and no fewer than two. Under no circumstances shall price

210 or fees be a part of the prequalification criteria. Design-  
211 builders may be interviewed in either phase I or phase II of  
212 the process. Points assigned in phase I of the evaluation  
213 process shall not carry forward to phase II of the process.  
214 All qualified design-builders shall be ranked on points  
215 given in phases II and III only.

216 11. The public owner shall have discretion to  
217 disqualify any design-builder who, in the public owner's  
218 opinion, lacks the minimum qualifications required to  
219 perform the work.

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

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

227 (1) The public owner shall invite the top qualified  
228 design-builders to participate in phase II of the process;

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

233 (3) The ability of the design-builder to meet the  
234 schedule for completing a project as specified by the public  
235 owner may be considered as an element of evaluation in phase  
236 II;

237 (4) Up to twenty percent of the points awarded to each  
238 design-builder in phase II may be based on each design-  
239 builder's qualifications and ability to design, contract,  
240 and deliver the project on time and within the budget of the  
241 public owner;

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

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

249 14. Phase III shall be conducted as follows:

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

255 (2) Cost proposals shall be submitted in accordance  
256 with the instructions of the request for proposal. The  
257 public owner shall reject any proposal that is not submitted  
258 on time. Phase III shall account for not less than forty  
259 percent of the total point score as specified in the request  
260 for proposal;

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

267 (4) Cost proposals shall be opened at the time and  
268 place specified in the request for proposal and shall be  
269 made publicly available. At the same time and place, the  
270 evaluation team shall make public its scoring of phase II.  
271 Cost proposals shall be evaluated in accordance with the  
272 requirements of the request for proposal. In evaluating the  
273 cost proposals, the lowest responsive bidder shall be

274 awarded the total number of points assigned to be awarded in  
275 phase III. For all other bidders, cost points shall be  
276 calculated by reducing the maximum points available in phase  
277 III by at least one percent for each percentage point by  
278 which the bidder exceeds the lowest bid and the points  
279 assigned shall be added to the points assigned for phase II  
280 for each design-builder;

281 (5) If the public owner determines that it is not in  
282 the best interest of the public owner to proceed with the  
283 project pursuant to the proposal offered by the design-  
284 builder with the highest total number of points, the public  
285 owner shall reject all proposals. In this event, all  
286 qualified and responsive design-builders with lower point  
287 totals shall receive a stipend and the responsive design-  
288 builder with the highest total number of points shall  
289 receive an amount equal to two times the stipend. If the  
290 public owner decides to award the project, the responsive  
291 design-builder with the highest number of points shall be  
292 awarded the contract; and

293 (6) If all proposals are rejected, the public owner  
294 may solicit new proposals using different design criteria,  
295 budget constraints, or qualifications.

296 15. As an inducement to qualified design-builders, the  
297 public owner shall pay a reasonable stipend, the amount of  
298 which shall be established in the request for proposal, to  
299 each prequalified design-builder whose proposal is  
300 responsive but not accepted. Such stipend shall be no less  
301 than one-half of one percent of the total project budget.  
302 Upon payment of the stipend to any unsuccessful design-  
303 builder, the public owner shall acquire a nonexclusive right  
304 to use the design submitted by the design-builder, and the  
305 design-builder shall have no further liability for the use

306 of the design by the public owner in any manner. If the  
307 design-builder desires to retain all rights and interest in  
308 the design proposed, the design-builder shall forfeit the  
309 stipend.

310 16. The payment bond requirements of section 107.170  
311 shall apply to a design-build project. All persons  
312 furnishing design services shall be deemed to be covered by  
313 the payment bond the same as any person furnishing labor and  
314 materials. The performance bond for the design-builder  
315 shall not cover any damages of the type specified to be  
316 covered by the professional liability insurance established  
317 by the public owner in the request for proposals.

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

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

[34.057.] 8.960. 1. Unless contrary to any federal  
2 funding requirements or unless funds from a state grant are  
3 not timely received by the contracting public municipality  
4 but notwithstanding any other law to the contrary, all  
5 public works contracts made and awarded by the appropriate



6 officer, board or agency of the state or of a political  
7 subdivision of the state or of any district therein,  
8 including any municipality, county and any board referred to  
9 as the public owner, for construction, reconstruction or  
10 alteration of any public works project, shall provide for  
11 prompt payment by the public owner to the contractor, and  
12 any professional engineer, architect, landscape architect,  
13 or land surveyor, as well as prompt payment by the  
14 contractor to the subcontractor and material supplier in  
15 accordance with the following:

16 (1) A public owner shall make progress payments to the  
17 contractor and any professional engineer, architect,  
18 landscape architect, or land surveyor on at least a monthly  
19 basis as the work progresses, or, on a lump sum basis  
20 according to the terms of the lump sum contract. Except in  
21 the case of lump sum contracts, payments shall be based upon  
22 estimates prepared at least monthly of work performed and  
23 material delivered, as determined by the project architect  
24 or engineer. Retainage withheld on any construction  
25 contract or subcontract for public works projects shall not  
26 exceed five percent of the value of the contract or  
27 subcontract. If the contractor is not required to obtain a  
28 bond under section 107.170 because the cost of the public  
29 works contract is not estimated to exceed fifty thousand  
30 dollars, the public owner may withhold retainage on the  
31 public works project in an amount not to exceed ten percent  
32 of the value of the contract or subcontract. The public  
33 owner shall pay the contractor the amount due, less a  
34 retainage, within thirty days following the latter of the  
35 following:

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

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

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

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

50           (3) If, in the discretion of the owner and the project  
51 architect or engineer and the contractor, it is determined  
52 that a subcontractor's performance has been completed and  
53 the subcontractor can be released prior to substantial  
54 completion of the public works contract without risk to the  
55 public owner, the contractor shall request such adjustment  
56 in retainage, if any, from the public owner as necessary to  
57 enable the contractor to pay the subcontractor in full. The  
58 public owner may reduce or eliminate retainage on any  
59 contract payment if, in the public owner's opinion, the work  
60 is proceeding satisfactorily. If retainage is released and  
61 there are any remaining minor items to be completed, an  
62 amount equal to one hundred fifty percent of the value of  
63 each item as determined by the public owner's duly  
64 authorized representatives shall be withheld until such item  
65 or items are completed;

66           (4) The public owner shall pay at least ninety-eight  
67 percent of the retainage, less any offsets or deductions  
68 authorized in the contract or otherwise authorized by law,  
69 to the contractor. The contractor shall pay the

70 subcontractor or supplier after substantial completion of  
71 the contract work and acceptance by the public owner's  
72 authorized contract representative, or as may otherwise be  
73 provided by the contract specifications for state highway,  
74 road or bridge projects administered by the state highways  
75 and transportation commission. Such payment shall be made  
76 within thirty days after acceptance, and the invoice and all  
77 other appropriate documentation and certifications in  
78 complete and acceptable form are provided, as may be  
79 required by the contract documents. If the public owner or  
80 the owner's representative determines the work is not  
81 substantially completed and accepted, then the owner or the  
82 owner's representative shall provide a written explanation  
83 of why the work is not considered substantially completed  
84 and accepted within fourteen calendar days to the  
85 contractor, who shall then provide such notice to the  
86 subcontractor or suppliers responsible for such work. If  
87 such written explanation is not given by the public body,  
88 the public body shall pay at least ninety-eight percent of  
89 the retainage within thirty calendar days. If at that time  
90 there are any remaining minor items to be completed, an  
91 amount equal to one hundred fifty percent of the value of  
92 each item as determined by the public owner's representative  
93 shall be withheld until such items are completed;

94 (5) All estimates or invoices for supplies and  
95 services purchased, approved and processed, or final  
96 payments, shall be paid promptly and shall be subject to  
97 late payment charges provided in this section. Except as  
98 provided in subsection 4 of this section, if the contractor  
99 has not been paid within thirty days as set forth in  
100 subdivision (1) of subsection 1 of this section, the  
101 contracting agency shall pay the contractor, in addition to

102 the payment due him, interest at the rate of one and one-  
103 half percent per month calculated from the expiration of the  
104 thirty-day period until fully paid;

105 (6) When a contractor receives any payment, the  
106 contractor shall pay each subcontractor and material  
107 supplier in proportion to the work completed by each  
108 subcontractor and material supplier his application less any  
109 retention not to exceed five percent. If the contractor  
110 receives less than the full payment due under the public  
111 construction contract, the contractor shall be obligated to  
112 disburse on a pro rata basis those funds received, with the  
113 contractor, subcontractors and material suppliers each  
114 receiving a prorated portion based on the amount of  
115 payment. When, however, the public owner does not release  
116 the full payment due under the contract because there are  
117 specific areas of work or materials he is rejecting or  
118 because he has otherwise determined such areas are not  
119 suitable for payment then those specific subcontractors or  
120 suppliers involved shall not be paid for that portion of the  
121 work rejected or deemed not suitable for payment; provided  
122 the public owner or the owner's representative gives a  
123 written explanation to the contractor, subcontractor, or  
124 supplier involved as to why the work or supplies were  
125 rejected or deemed not suitable for payment, and all other  
126 subcontractors and suppliers shall be paid in full;

127 (7) If the contractor, without reasonable cause, fails  
128 to make any payment to his subcontractors and material  
129 suppliers within fifteen days after receipt of payment under  
130 the public construction contract, the contractor shall pay  
131 to his subcontractors and material suppliers, in addition to  
132 the payment due them, interest in the amount of one and one-  
133 half percent per month, calculated from the expiration of

134 the fifteen-day period until fully paid. This subdivision  
135 shall also apply to any payments made by subcontractors and  
136 material suppliers to their subcontractors and material  
137 suppliers and to all payments made to lower tier  
138 subcontractors and material suppliers throughout the  
139 contracting chain;

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

147 (a) Completion of the project and filing with the  
148 owner of all required documentation and certifications, in  
149 complete and acceptable form, in accordance with the terms  
150 and conditions of the contract;

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

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

160 2. Nothing in this section shall prevent the  
161 contractor or subcontractor, at the time of application or  
162 certification to the public owner or contractor, from  
163 withholding such applications or certifications to the owner  
164 or contractor for payment to the subcontractor or material  
165 supplier. Amounts intended to be withheld shall not be

166 included in such applications or certifications to the  
167 public owner or contractor. Reasons for withholding such  
168 applications or certifications shall include, but not be  
169 limited to, the following: unsatisfactory job progress;  
170 defective construction work or material not remedied;  
171 disputed work; failure to comply with other material  
172 provisions of the contract; third-party claims filed or  
173 reasonable evidence that a claim will be filed; failure of  
174 the subcontractor to make timely payments for labor,  
175 equipment and materials; damage to a contractor or another  
176 subcontractor or material supplier; reasonable evidence that  
177 the contract cannot be completed for the unpaid balance of  
178 the subcontract sum or a reasonable amount for retention,  
179 not to exceed the initial percentage retained by the owner.

180 3. Should the contractor determine, after application  
181 or certification has been made and after payment has been  
182 received from the public owner, or after payment has been  
183 received by a contractor based upon the public owner's  
184 estimate of materials in place and work performed as  
185 provided by contract, that all or a portion of the moneys  
186 needs to be withheld from a specific subcontractor or  
187 material supplier for any of the reasons enumerated in this  
188 section, and such moneys are withheld from such  
189 subcontractor or material supplier, then such undistributed  
190 amounts shall be specifically identified in writing and  
191 deducted from the next application or certification made to  
192 the public owner or from the next estimate by the public  
193 owner of payment due the contractor, until a resolution of  
194 the matter has been achieved. Disputes shall be resolved in  
195 accordance with the terms of the contract documents. Upon  
196 such resolution the amounts withheld by the contractor from  
197 the subcontractor or material supplier shall be included in

198 the next application or certification made to the public  
199 owner or the next estimate by the public owner and shall be  
200 paid promptly in accordance with the provisions of this  
201 section. This subsection shall also apply to applications  
202 or certifications made by subcontractors or material  
203 suppliers to the contractor and throughout the various tiers  
204 of the contracting chain.

205 4. The contracts which provide for payments to the  
206 contractor based upon the public owner's estimate of  
207 materials in place and work performed rather than  
208 applications or certifications submitted by the contractor,  
209 the public owner shall pay the contractor within thirty days  
210 following the date upon which the estimate is required by  
211 contract to be completed by the public owner, the amount due  
212 less a retainage not to exceed five percent. All such  
213 estimates by the public owner shall be paid promptly and  
214 shall be subject to late payment charges as provided in this  
215 subsection. After the thirtieth day following the date upon  
216 which the estimate is required by contract to be completed  
217 by the public owner, the contracting agency shall pay the  
218 contractor, in addition to the payment due him, interest at  
219 a rate of one and one-half percent per month calculated from  
220 the expiration of the thirty-day period until fully paid.

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

230           6. Nothing in this section shall prevent the owner  
231 from withholding payment or final payment from the  
232 contractor, or a subcontractor or material supplier.  
233 Reasons for withholding payment or final payment shall  
234 include, but not be limited to, the following: liquidated  
235 damages; unsatisfactory job progress; defective construction  
236 work or material not remedied; disputed work; failure to  
237 comply with any material provision of the contract; third  
238 party claims filed or reasonable evidence that a claim will  
239 be filed; failure to make timely payments for labor,  
240 equipment or materials; damage to a contractor,  
241 subcontractor or material supplier; reasonable evidence that  
242 a subcontractor or material supplier cannot be fully  
243 compensated under its contract with the contractor for the  
244 unpaid balance of the contract sum; or citation by the  
245 enforcing authority for acts of the contractor or  
246 subcontractor which do not comply with any material  
247 provision of the contract and which result in a violation of  
248 any federal, state or local law, regulation or ordinance  
249 applicable to that project causing additional costs or  
250 damages to the owner.

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

258           8. Notwithstanding any other provisions in this  
259 section to the contrary, no late payment interest shall be  
260 due and owing for payments which are withheld in good faith  
261 for reasonable cause pursuant to subsections 2, 5, and 6 of



262 this section. If it is determined by a court of competent  
263 jurisdiction that a payment which was withheld pursuant to  
264 subsections 2, 5, and 6 of this section was not withheld in  
265 good faith for reasonable cause, the court may impose  
266 interest at the rate of one and one-half percent per month  
267 calculated from the date of the invoice and may, in its  
268 discretion, award reasonable attorney fees to the prevailing  
269 party. In any civil action or part of a civil action  
270 brought pursuant to this section, if a court determines  
271 after a hearing for such purpose that the cause was  
272 initiated, or a defense was asserted, or a motion was filed,  
273 or any proceeding therein was done frivolously and in bad  
274 faith, the court shall require the party who initiated such  
275 cause, asserted such defense, filed such motion, or caused  
276 such proceeding to be had to pay the other party named in  
277 such action the amount of the costs attributable thereto and  
278 reasonable expenses incurred by such party, including  
279 reasonable attorney fees.

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

11 2. Any clause in a public works contract that purports  
12 to waive, release, or extinguish the rights of a contractor  
13 to recover costs or damages, or obtain an equitable  
14 adjustment, for delays in performing such contract, if such

15 delay is caused in whole, or in part, by acts or omissions  
16 within the control of the contracting public entity or  
17 persons acting on behalf thereof, is against public policy  
18 and is void and unenforceable.

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

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

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

27 (3) Provides for reasonable liquidated damages; or

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

[34.203.] **8.964.** The provisions of sections [34.203 to  
2 34.216] **8.964 to 8.974** shall be known and may be cited as  
3 the "Fairness in Public Construction Act".

[34.206.] **8.966.** The purpose of sections [34.203 to  
2 34.216\*] **8.964 to 8.974** is to fulfill the state's  
3 proprietary objectives in maintaining and promoting the  
4 economical, nondiscriminatory, and efficient expenditures of  
5 public funds in connection with publicly funded or assisted  
6 construction projects. Nothing in sections [34.203 to  
7 34.216\*] **8.964 to 8.974** shall prohibit employers or other  
8 parties covered by the National Labor Relations Act from  
9 entering into agreements or engaging in any other activity  
10 arguably protected by law, nor shall any aspect of sections  
11 [34.203 to 34.216\*] **8.964 to 8.974** be interpreted in such a  
12 way as to interfere with the labor relations of parties  
13 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

4 abatements, or tax credits or enter into cooperative  
5 agreements for construction projects or for the improvement,  
6 maintenance, or renovation of real property or fixtures, a  
7 condition of which requires that bid specifications, project  
8 agreements, or other controlling documents pertaining to the  
9 grant, tax abatement, tax credit, or cooperative agreement  
10 contain any of the elements specified in section [34.209]  
11 **8.968**.

12 2. The state, any agency of the state, any political  
13 subdivision, or any instrumentality thereof shall exercise  
14 such authority as may be required to preclude a grant, tax  
15 abatement, or tax credit recipient or party to a cooperative  
16 agreement from imposing any of the elements specified in  
17 section [34.209] **8.968** in connection with any grant or  
18 cooperative agreement awarded or entered into. Nothing in  
19 sections [34.203 to 34.217] **8.964 to 8.974** shall prohibit  
20 contractors or subcontractors from voluntarily entering into  
21 agreements described in section [34.209] **8.968**.

[34.217.] **8.972**. Notwithstanding the provisions of  
2 section 1.140, the provisions of sections 290.095 and  
3 290.250 and sections [34.203 to 34.216\*] **8.964 to 8.974**  
4 shall not be severable. In the event a court of competent  
5 jurisdiction rules that any part of this act is  
6 unenforceable, the entire act shall be rendered null and  
7 void.

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

6 2. Any entity which violates the provisions of  
7 sections [34.203 to 34.217] **8.964 to 8.974** shall not be

8 eligible for any state funding or tax credits issued by the  
9 state for two years.

10 3. The prosecuting attorney or circuit attorney with  
11 jurisdiction over the location where a violation of sections  
12 [34.203 to 34.217] **8.964 to 8.974** occurs, or the attorney  
13 general of this state, shall investigate complaints of  
14 violation of such sections, and use all means at their  
15 command to ensure the effective enforcement of this section.

34.055. 1. Except as otherwise provided in section  
2 [34.057] **8.960**, all invoices for supplies and services  
3 purchased by the state, duly approved and processed, shall  
4 be subject to interest charges or late payment charges as  
5 provided in this section.

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

20 3. The state shall be liable for late payment charges  
21 on any delinquent bill for services purchased by the state  
22 from a gas corporation, electrical corporation, water  
23 corporation, or sewer corporation which has received  
24 authorization from the public service commission to impose

25 late payment charges on delinquent utility bills. The rate  
26 of such late payment charges shall be as established for  
27 each such corporation by order of the public service  
28 commission, but bills rendered to the state shall not be  
29 considered delinquent until thirty days after rendition of  
30 the bill by the corporation.

31 4. Any such interest charges or late payment charges  
32 shall be paid from appropriations which were made for the  
33 fiscal year in which the supplies or services were delivered  
34 to the respective departments purchasing such supplies or  
35 services. The commissioner of administration shall be  
36 responsible for the timely implementation of this section  
37 and all officers, departments, institutions and agencies of  
38 state government shall fully cooperate with the commissioner  
39 of administration in the implementation of this section. No  
40 late payment penalty shall be assessed against, nor payable  
41 by, the state unless pursuant to the provisions of this  
42 section.

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

34.100. The commissioner of administration may, when  
2 in the commissioner's best judgment it is in the best  
3 interests of the state, delegate the commissioner's  
4 procurement authority pursuant to this chapter to an  
5 individual department; provided, however, that each instance  
6 of single feasible source purchasing authority in excess of  
7 **[five] ten** thousand dollars under section 34.044 must be  
8 specifically delegated by the commissioner. The delegation  
9 may allow departments to negotiate in accordance with

10 section 34.042 the purchase of services for patients,  
11 residents or clients with funds appropriated for this  
12 purpose. In accepting this delegated authority the  
13 department acknowledges its ability to, and agrees to,  
14 fulfill all of the requirements of this chapter in making  
15 purchases and entering into contracts and keeping records.  
16 No claim for payment based upon any purchase under this  
17 section shall be certified by the commissioner unless  
18 accompanied by such documentation of compliance with the  
19 provisions of this chapter as the commissioner may require.  
20 Any department that fails to fulfill all such requirements  
21 may have its delegated authority rescinded by the  
22 commissioner of administration.

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