

## SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1484

AN ACT

To repeal sections 34.046 and 67.5060, RSMo, and to enact in lieu thereof two new sections relating to public contracts.

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

Section A. Sections 34.046 and 67.5060, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 34.046 and 67.5060, to read as follows:

34.046. The commissioner of administration may contract directly with other governmental or nonprofit entities for the purchase of supplies. The commissioner of administration may also participate in, sponsor, conduct or administer a cooperative purchasing agreement whereby supplies are procured in accordance with a contract established by another governmental entity or a nonprofit entity, solely comprised of and controlled by one or more political subdivisions, provided that such contract was established in accordance with the laws and regulations applicable to the establishing governmental or nonprofit entity.

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

(1) "Design-build", a project delivery method subject to a **[three-stage]** multi-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]** five million dollars;

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

(5) "Design criteria consultant", a person, corporation, partnership, or other legal entity duly licensed and authorized to practice architecture or

professional engineering in this state under chapter 327 who is employed by or contracted by the political subdivision to assist the political subdivision in the development of project design criteria, requests for proposals, evaluation of proposals, the evaluation of the construction under a design-build contract or a progressive design-build contract to determine adherence to the design criteria, and any additional services requested by the political subdivision to represent its interests in relation to a project. The design criteria consultant may not submit a proposal or furnish design or construction services for the design-build contract for which its services were sought;

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

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

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

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

(8) "Progressive design-build contract", a contract that is subject to a two-staged qualification-based selection process as described in subdivision (1) of subsection 13 of this section 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 progressive design-build project;

(9) "Progressive design-build project", the design, construction, alteration, addition, remodeling, or improvement of any buildings or facilities under one, progressive design-build contract with a political subdivision. Such progressive 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;

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

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

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

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

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

4. The political subdivision shall publicly disclose at a regular meeting its intent to utilize the design-build method or the progressive design-build method and its project design criteria at least one week prior to publishing the request for proposals. Notice of requests

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The phase III proposal shall provide a firm, fixed cost of design and construction. The proposal shall be

accompanied by bid security and any other items, such as statements of minority participation as required by the request for proposal;

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

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

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

(5) If the political subdivision determines that it is not in the best interest of the political subdivision to proceed with the project pursuant to the proposal offered by the design-builder with the highest total number of points,

the political subdivision shall reject all proposals. In this event, all qualified and responsive design-builders with lower point totals shall receive a stipend and the responsive design-builder with the highest total number of points shall receive an amount equal to two times the stipend. If the political subdivision decides to award the project, the responsive design-builder with the highest number of points shall be awarded the contract; and

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

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

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

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

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

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

(c) The design criteria package;

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

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

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

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

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

(2) The political subdivision shall solicit proposals in a two-stage process. Phase I shall be the solicitation and evaluation of the qualifications of design-builders. Phase II shall be the solicitation and evaluation of proposals describing the design-builder's approach to design development, preconstruction services and construction of the project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) This subsection shall expire on August 28, 2036.

[16.] 14. (1) As used in this subsection, "wastewater or water contract" means any design-build contract or progressive design-build contract that involves the provision of engineering and construction services either directly by a party to the contract or through subcontractors retained by a party to the contract for a wastewater or water storage, conveyance, or treatment facility project.

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

(3) In disbursing community development block grants under 42 U.S.C. Sections 5301 to 5321, the department of

economic development shall not reject wastewater or water projects solely for utilizing wastewater or water contracts.

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

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

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

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

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

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

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

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

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