

SECOND REGULAR SESSION

SENATE BILL NO. 1484

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HENDERSON.

5910S.01I

KRISTINA MARTIN, Secretary

AN ACT

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

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

Section A. Section 67.5060, RSMo, is repealed and one new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

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

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

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

15 (3) "Design-build project", the design, construction,
16 alteration, addition, remodeling, or improvement of any
17 buildings or facilities under contract with a political

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

18 subdivision. Such design-build projects include, but are
19 not limited to:

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

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

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

40 (5) "Design criteria consultant", a person,
41 corporation, partnership, or other legal entity duly
42 licensed and authorized to practice architecture or
43 professional engineering in this state under chapter 327 who
44 is employed by or contracted by the political subdivision to
45 assist the political subdivision in the development of
46 project design criteria, requests for proposals, evaluation
47 of proposals, the evaluation of the construction under a
48 design-build **contract or a progressive design-build** contract
49 to determine adherence to the design criteria, and any

50 additional services requested by the political subdivision
51 to represent its interests in relation to a project. The
52 design criteria consultant may not submit a proposal or
53 furnish design or construction services for the design-build
54 contract for which its services were sought;

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

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

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

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

78 (8) "**Progressive design-build contract**", a contract
79 **that is subject to a two-staged qualification-based**
80 **selection process as described in subdivision (1) of**
81 **subsection 13 of this section between a political**

82 subdivision and a design-builder to furnish the
83 architectural, engineering, and related design services and
84 the labor, materials, supplies, equipment, and other
85 construction services required for a progressive design-
86 build project;

87 (9) "Progressive design-build project", the design,
88 construction, alteration, addition, remodeling, or
89 improvement of any buildings or facilities under one,
90 progressive design-build contract with a political
91 subdivision. Such progressive design-build projects
92 include, but are not limited to:

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

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

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

104 [(9)] (11) "Request for proposal", the document by
105 which the political subdivision solicits proposals for a
106 design-build or progressive design-build contract;

107 [(10)] (12) "Stipend", an amount paid to the
108 unsuccessful but responsive, short-listed design-builders to
109 defray the cost of participating in phase II of the
110 selection process for a design-build project described in
111 this section.

112 2. In using a design-build contract or a progressive
113 design-build contract, the political subdivision shall

114 determine the scope and level of detail required to permit
115 qualified persons to submit proposals in accordance with the
116 request for proposals given the nature of the project.

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

135 4. The political subdivision shall publicly disclose
136 at a regular meeting its intent to utilize the design-build
137 method **or the progressive design-build method** and its
138 project design criteria at least one week prior to
139 publishing the request for proposals. Notice of requests
140 for proposals shall be advertised by publication in a
141 newspaper of general circulation published in the county
142 where the political subdivision is located once a week for
143 two consecutive weeks prior to opening the proposals, or by
144 a virtual notice procedure that notifies interested parties
145 for at least twenty various purchases, design contracts,

146 construction contracts, or other contracts each year for the
147 political subdivision. The political subdivision shall
148 publish a notice of a request for proposal with a
149 description of the project, the procedures for submission,
150 and the selection criteria to be used.

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

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

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

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

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

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

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

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

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

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

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

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

187 **[7.] (2)** The political subdivision shall solicit
188 proposals in a three-stage process. Phase I shall be the
189 solicitation of qualifications of the design-build team.
190 Phase II shall be the solicitation of a technical proposal
191 including conceptual design for the project. Phase III
192 shall be the proposal of the construction cost[.];

193 **[8.] (3)** The political subdivision shall review the
194 submissions of the proposals and assign points to each
195 proposal in accordance with this section and as set out in
196 the instructions of the request for proposal[.];

197 **[9.] (4)** Phase I shall require all design-builders to
198 submit a statement of qualification that shall include, but
199 not be limited to:

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

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

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

207 **[(4)] (d)** The names and qualifications of the primary
208 design consultants and the primary trade contractors with
209 whom the design-builder proposes to subcontract or joint

210 venture. The design-builder shall not replace an identified
211 contractor, subcontractor, design consultant, or
212 subconsultant without the written approval of the political
213 subdivision.

214 [10.] 7. The political subdivision shall evaluate the
215 qualifications of all the design-builders who submitted
216 proposals in accordance with the instructions of the request
217 for proposal. Architectural and engineering services on the
218 project shall be evaluated in accordance with the
219 requirements of sections 8.285 and 8.291. Qualified design-
220 builders selected by the evaluation team may proceed to
221 phase II of the selection process. Design-builders lacking
222 the necessary qualifications to perform the work shall be
223 disqualified and shall not proceed to phase II of the
224 process. This process of short listing shall narrow the
225 number of qualified design-builders to not more than five
226 nor fewer than two. Under no circumstances shall price or
227 fees be a part of the prequalification criteria. Design-
228 builders may be interviewed in either phase I or phase II of
229 the process. Points assigned in phase I of the evaluation
230 process shall not carry forward to phase II of the process.
231 All qualified design-builders shall be ranked on points
232 given in phases II and III only.

233 [11.] 8. The political subdivision shall have
234 discretion to disqualify any design-builder who, in the
235 political subdivision's opinion, lacks the minimum
236 qualifications required to perform the work.

237 [12.] 9. Once a sufficient number of no more than five
238 and no fewer than two qualified design-builders have been
239 selected, the design-builders shall have a specified amount
240 of time in which to assemble phase II and phase III
241 proposals.

242 [13.] **10.** Phase II of the process shall be conducted
243 as follows:

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

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

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

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

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

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

267 [14.] **11.** Phase III shall be conducted as follows:

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

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

299 (5) If the political subdivision determines that it is
300 not in the best interest of the political subdivision to
301 proceed with the project pursuant to the proposal offered by
302 the design-builder with the highest total number of points,
303 the political subdivision shall reject all proposals. In
304 this event, all qualified and responsive design-builders

305 with lower point totals shall receive a stipend and the
306 responsive design-builder with the highest total number of
307 points shall receive an amount equal to two times the
308 stipend. If the political subdivision decides to award the
309 project, the responsive design-builder with the highest
310 number of points shall be awarded the contract; and

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

314 [15.] **12.** As an inducement to qualified design-
315 builders, the political subdivision shall pay a reasonable
316 stipend, the amount of which shall be established in the
317 request for proposal, to each prequalified design-builder
318 whose proposal is responsive but not accepted. Such stipend
319 shall be no less than one-half of one percent of the total
320 project budget. Upon payment of the stipend to any
321 unsuccessful design-builder, the political subdivision shall
322 acquire a nonexclusive right to use the design submitted by
323 the design-builder, and the design-builder shall have no
324 further liability for the use of the design by the political
325 subdivision in any manner. If the design-builder desires to
326 retain all rights and interest in the design proposed, the
327 design-builder shall forfeit the stipend.

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

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

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

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

338 (c) The design criteria package;

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

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

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

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

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

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

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

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

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

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

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

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

398 not carry forward to phase II of the process. All qualified
399 design-builders shall be ranked on points given in phase II
400 only;

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

405 (7) Once a sufficient number of no more than five
406 qualified design-builders have been selected, the design-
407 builders shall have a specified amount of time in which to
408 assemble phase II proposals;

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

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

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

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

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

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

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

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

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

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

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

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

452 [16.] **14.** (1) As used in this subsection, "wastewater
453 or water contract" means any design-build contract that
454 involves the provision of engineering and construction
455 services either directly by a party to the contract or
456 through subcontractors retained by a party to the contract
457 for a wastewater or water storage, conveyance, or treatment
458 facility project.

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

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

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

470 (5) A political subdivision planning a wastewater or
471 water design-build project shall retain an engineer duly
472 licensed in this state to assist in preparing any necessary
473 documents and specifications and evaluations of design-build
474 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 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

491 regulated by the Federal Railroad Administration shall
492 consult with the affected railroad on required
493 specifications relating to clearance, safety, insurance, and
494 indemnification to be included in the construction documents
495 for such project.

496 **[20.] 18.** Under section 327.465, any design-builder
497 that enters into a design-build contract with a political
498 subdivision is exempt from the requirement that such person
499 or entity hold a license or that such corporation hold a
500 certificate of authority if the architectural, engineering,
501 or land-surveying services to be performed under the design-
502 build contract are performed through subcontracts or joint
503 ventures with properly licensed or authorized persons or
504 entities, and not performed by the design-builder or its own
505 employees.

506 **[21.] 19.** This section shall not apply to:

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

509 (2) Any special charter city, or any city or county
510 governed by home rule under Article VI, Sections 18(a) to
511 18(r) or 19 of the Constitution of Missouri that has adopted
512 a design-build process via ordinance, rule, or regulation.

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