

FIRST REGULAR SESSION

HOUSE BILL NO. 1042

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KORMAN.

2270H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 8.683 and 8.685, RSMo, and to enact in lieu thereof five new sections relating to design-build contracts.

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

Section A. Sections 8.683 and 8.685, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 8.683, 8.685, 67.5050, 67.5060, and 67.5070, to read as follows:

8.683. Upon award of a construction management services contract, the successful construction manager shall contract with the public owner to furnish his skill and judgment in cooperation with, and reliance upon, the services of the project architect or engineer. The construction manager shall furnish business administration, management of the construction process and other specified services to the public owner and shall perform in an expeditious and economical manner consistent with the interest of the public owner. Should the public owner determine it to be in the public's best interest, the construction manager may provide or perform basic services for which reimbursement is provided in the general conditions to the construction management services contract. The construction manager shall not, however, be permitted to bid on or perform any of the actual construction on a public works project in which he is acting as construction manager, nor shall any construction firm which controls, is controlled by, or shares common ownership or control with, the construction manager, be allowed to bid on or perform work on such project, **unless the construction manager performs all of the following actions:**

- (1) Submits a sealed bid in the same manner as any other bidder;**
- (2) Gives proper notice to other interested bidders; and**
- (3) Complies with all provisions of section 67.5050.**

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

17 The actual construction work on the project shall be awarded by competitive bidding as provided
18 by law. All successful bidders shall contract directly with the public owner, but shall perform
19 at the direction of the construction manager unless otherwise provided in the construction
20 manager's contract with the public owner. All successful bidders shall provide payment and
21 performance bonds to the public owner. All successful bidders shall meet all the obligations of
22 a prime contractor to whom a contract is awarded, pertaining to the payment of prevailing wages
23 pursuant to sections 290.210 to 290.340. In addition, all nonresident employers shall meet the
24 bonding and registration requirements of sections 285.230 to 285.234.

8.685. **Unless all provisions of section 67.5050 are complied with**, no construction
2 management services contract may be awarded by a public owner on a negotiated basis as
3 provided herein if the construction manager, or a firm that controls, is controlled by, or shares
4 common ownership or control with the construction manager, guarantees, warrants, or otherwise
5 assumes financial responsibility for the work of others on the project; or provides the public
6 owner with a guaranteed maximum price for the work of others on the project; or furnishes or
7 guarantees a performance or payment bond for other contractors on the project. In any such case
8 **otherwise**, the contract for construction management services shall be let by competitive bidding
9 as in the case of contracts for construction work.

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

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

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

9 2. Any political subdivision may use the construction manager-at-risk method for
10 a project. In using that method and in entering into a contract for the services of a
11 construction manager-at-risk, the political subdivision shall follow the procedures
12 prescribed by this section.

13 3. Before or concurrently with selecting a construction manager-at-risk, the
14 political subdivision shall select or designate an engineer or architect who shall prepare the
15 construction documents for the project and who has full responsibility for complying with
16 all state laws, as applicable. If the engineer or architect is not a full-time employee of the
17 political subdivision, the political subdivision shall select the engineer or architect on the
18 basis of demonstrated competence and qualifications as provided by sections 8.285 to 8.291.
19 The political subdivision's engineer or architect for a project may not serve, alone or in

20 combination with another, as the construction manager-at-risk. This subsection does not
21 prohibit a political subdivision's engineer or architect from providing customary
22 construction phase services under the engineer's or architect's original professional service
23 agreement in accordance with applicable licensing laws.

24 4. The political subdivision may provide or contract for, independently of the
25 construction manager-at-risk, inspection services, testing of construction materials,
26 engineering, and verification of testing services necessary for acceptance of the facility by
27 the political subdivision.

28 5. The political subdivision shall select the construction manager-at-risk in either
29 a one-step or two-step process. The political subdivision shall prepare a request for
30 proposals, in the case of a one-step process, or a request for qualifications, in the case of
31 a two-step process, that includes general information on the project site, project scope,
32 schedule, selection criteria, and the time and place for receipt of proposals or
33 qualifications, as applicable; a statement as to whether the selection process is a one-step
34 or two-step process; and other information that may assist the political subdivision in its
35 selection of a construction manager-at-risk. The political subdivision shall state the
36 selection criteria in the request for proposals or qualifications, as applicable. The selection
37 criteria may include the construction manager's experience, past performance, safety
38 record, proposed personnel and methodology, and other appropriate factors that
39 demonstrate the capability of the construction manager-at-risk. If a one-step process is
40 used, the political subdivision may request, as part of the proposal, proposed fees and
41 prices for fulfilling the general conditions. If a two-step process is used, the political
42 subdivision shall not request fees or prices in step one. In step two, the political subdivision
43 may request that five or fewer construction managers, selected solely on the basis of
44 qualifications, provide additional information, including the construction
45 manager-at-risk's proposed fee and its price for fulfilling the general conditions. By either
46 method, past performance, experience, references, and capacity shall account for a
47 minimum of forty percent of the evaluation. Cost shall account for a maximum of sixty
48 percent of the evaluation.

49 6. The political subdivision shall publish the request for proposal or qualifications
50 in a manner prescribed by the political subdivision.

51 7. For each step, the political subdivision shall receive, publicly open, and read
52 aloud the names of the construction managers. Within forty-five days after the date of
53 opening the proposals, the political subdivision or its representative shall evaluate and
54 rank each proposal submitted in relation to the criteria set forth in the request for
55 proposals.

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

66 **9. A construction manager-at-risk shall publicly advertise, in the manner**
67 **prescribed by chapter 8, and receive bids or proposals from trade contractors or**
68 **subcontractors for the performance of all major elements of the work other than the minor**
69 **work that may be included in the general conditions. A construction manager-at-risk may**
70 **seek to perform portions of the work itself if the construction manager-at-risk submits its**
71 **bid or proposal for those portions of the work in the same manner as all other trade**
72 **contractors or subcontractors and if the political subdivision determines that the**
73 **construction manager-at-risk's bid or proposal provides the best value for the political**
74 **subdivision.**

75 **10. The construction manager-at-risk and the political subdivision or its**
76 **representative shall review all trade contractor or subcontractor bids or proposals in a**
77 **manner that does not disclose the contents of the bid or proposal during the selection**
78 **process to a person not employed by the construction manager-at-risk, engineer, architect,**
79 **or political subdivision. All bids or proposals shall be made public after the award of the**
80 **contract or within seven days after the date of the final selection of bids and proposals,**
81 **whichever is later.**

82 **11. If the construction manager-at-risk reviews, evaluates, and recommends to the**
83 **political subdivision a bid or proposal from a trade contractor or subcontractor but the**
84 **political subdivision requires another bid or proposal to be accepted, the political**
85 **subdivision may compensate the construction manager-at-risk by a change in price, time,**
86 **or guaranteed maximum cost for any additional cost and risk that the construction**
87 **manager-at-risk may incur because of the political subdivision's requirement that another**
88 **bid or proposal be accepted.**

89 **12. If a selected trade contractor or subcontractor defaults in the performance of**
90 **its work or fails to execute a subcontract after being selected in accordance with this**
91 **section, the construction manager-at-risk may itself, without advertising, fulfill the contract**

92 requirements or select a replacement trade contractor or subcontractor to fulfill the
93 contract requirements. If a fixed contract amount or guaranteed maximum price has not
94 been determined at the time the contract is awarded, the penal sums of the performance
95 and payment bonds delivered to the political subdivision shall each be in an amount equal
96 to the project budget, as set forth in the request for qualifications. The construction
97 manager-at-risk shall deliver the bonds not later than the tenth day after the date the
98 construction manager-at-risk executes the contract unless the construction manager-at-risk
99 furnishes a bid bond or other financial security acceptable to the political subdivision to
100 ensure that the construction manager-at-risk will furnish the required performance and
101 payment bonds if a guaranteed maximum price is established.

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

- 2 (1) "Design-build", a project delivery method subject to qualifications-based
3 selection for which the design and construction services are furnished under one contract;
- 4 (2) "Design-build contract", a contract which is subject to a qualifications-based
5 selection process described in sections 8.285 to 8.291 between a political subdivision and
6 a design-builder to furnish the architectural, engineering, and related design services and
7 the labor, materials, supplies, equipment, and other construction services required for a
8 design-build project;
- 9 (3) "Design-build project", the design, construction, alteration, addition,
10 remodeling, or improvement of any buildings or facilities under contract with a political
11 subdivision. Contracts for design-build projects that involve the construction,
12 replacement, or rehabilitation of political subdivision property such that, in all cases, the
13 project shall exceed an expenditure of twenty-five million dollars;
- 14 (4) "Design-builder", any individual, partnership, joint venture, or corporation
15 subject to a qualifications-based selection that offers to provide or provides design services
16 and general contracting services through a design-build contract in which services within
17 the scope of the practice of professional architecture or engineering are performed
18 respectively by a licensed architect or licensed engineer and in which services within the
19 scope of the practice of general contracting are performed by a licensed general contractor
20 or other legal entity that furnishes architecture or engineering services and construction
21 services either directly or through subcontracts. In order to protect the health, safety, and
22 general welfare of the public:
 - 23 (a) A design professional or professionals shall own at least a fifty percent interest
24 in the legal entity that is the design-builder or a legal entity that contracts with the design-
25 builder; or

26 (b) At least fifty percent of the members of the board of directors of the legal entity
27 that is the design-builder or a legal entity that contracts with the design-builder shall be
28 design professionals;

29 (5) "Design criteria consultant", a person, corporation, partnership, or other legal
30 entity duly registered and authorized to practice architecture or professional engineering
31 in this state under chapter 327, who is employed by contract by the political subdivision
32 to assist the political subdivision in the development of project design criteria, requests for
33 proposals, evaluation of proposals, evaluation of the construction under a design-build
34 contract to determine adherence to the design criteria, and any additional services
35 requested by the political subdivisions to represent its interests in relation to a project. The
36 design criteria consultant may not submit a proposal or furnish design or construction
37 services for the design-build contract for which its services were sought;

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

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

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

50 (b) Performed by a registered architect or professional engineer in connection with
51 the architect's or professional engineer's employment or practice;

52 (8) "Proposal", an offer in response to a request for proposals by a design-builder
53 to enter into a design-build contract for a public facility construction project under this
54 section;

55 (9) "Public facility construction project", the process of designing, constructing,
56 reconstructing, altering, or renovating a building owned by a political subdivision;

57 (10) "Qualification based selection", the selection process described in sections
58 8.285 to 8.291;

59 (11) "Request for proposal", the document by which the political subdivision
60 solicits proposals for a design-build contract; and

61 (12) "Stipend", an amount paid to the unsuccessful but responsive, short-listed
62 design-builders to defray the cost of participating in phase II of the qualification-based
63 selection process described in this section.

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

67 3. A design criteria consultant shall be employed or retained by the political
68 subdivision to assist in preparation of the request for proposal, perform periodic site visits,
69 prepare progress reports, review and approve progress and final pay applications of the
70 design-builder, review shop drawings and submissions, decide disputes, interpret the
71 construction documents, perform inspections upon substantial and final completion, assist
72 in warranty inspections, and provide any other professional service if the political
73 subdivision deems it to be in the public interest to have an independent design professional
74 assisting with the project administration. The consultant shall be selected and its contract
75 negotiated in compliance with sections 8.285 to 8.291.

76 4. Notice of requests for proposals shall be advertised in accordance with section
77 8.250. The political subdivision shall publish a notice of a request for proposal with a
78 description of the project, the rationale for the decision to use the design-build method of
79 procurement, the procedures for submission, and the selection criteria to be used.

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

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

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

87 (2) The proposed terms and conditions for the design-build contract;

88 (3) The design criteria package;

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

92 (5) A schedule for planned commencement and completion of the design-build
93 contract;

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

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

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

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

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

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

110 **(1) Demonstrated ability to perform projects comparable in design, scope, and**
111 **complexity;**

112 **(2) References of owners for whom design-build projects have been performed;**

113 **(3) Qualifications of personnel who will manage the design and construction aspects**
114 **of the project; and**

115 **(4) The names and qualifications of the primary design consultants and the**
116 **contractors with whom the design-builder proposes to subcontract. The design-builder**
117 **may not replace an identified subcontractor or subconsultant without the written approval**
118 **of the political subdivision.**

119 **10. The political subdivision shall evaluate the qualifications of all the design-**
120 **builders who submitted proposals in accordance with the instructions of the request for**
121 **proposal. Architectural and engineering services on the project shall be evaluated in**
122 **accordance with the requirements of sections 8.285 and 8.291. Qualified design-builders**
123 **selected by the evaluation team may proceed to phase II of the selection process. Design-**
124 **builders lacking the necessary qualifications to perform the work shall be disqualified and**
125 **shall not proceed to phase II of the process. Under no circumstances shall price or fees be**
126 **a part of the prequalification criteria. Points assigned in phase I of the evaluation process**
127 **shall not carry forward to phase II of the process. All qualified design-builders shall be**
128 **ranked on points given in phases II and III only.**

129 **11. The political subdivision shall have discretion to disqualify any design-builder**
130 **who, in the political subdivision's opinion, lacks the minimum qualifications required to**
131 **perform the work.**

132 **12. Once a sufficient number of qualified design-builders have been selected, the**
133 **design-builders shall have a specified amount of time in which to assemble phase II and**
134 **phase III proposals.**

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

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

138 **(2) A design-builder shall submit his or her design for the project to the level of**
139 **detail required in the request for proposal. The design proposal shall demonstrate**
140 **compliance with the requirements set out in the request for proposal;**

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

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

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

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

152 **14. Phase III shall be conducted as follows:**

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

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

160 **(3) Proposals for phase II and phase III shall be submitted concurrently at the time**
161 **and place specified in the request for proposal. The phase III cost proposals shall be**
162 **opened only after the phase II design proposals have been evaluated and assigned points;**

163 **(4) Cost proposals shall be opened and read aloud at the time and place specified**
164 **in the request for proposal. At the same time and place, the evaluation team shall make**
165 **public its scoring of phase II. Cost proposals shall be evaluated in accordance with the**
166 **requirements of the request for proposal. In evaluating the cost proposals, the low bidder**
167 **shall be awarded the total number of points assigned to be awarded in phase III. For all**

168 other bidders, cost points shall be calculated by reducing the maximum points available
169 in phase III by two percent or more for each percentage point by which the bidder exceeds
170 the lowest bid and the points assigned shall be added to the points assigned for phase II for
171 each design-builder;

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

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

182 15. As an inducement to qualified design-builders, the political subdivision may pay
183 a reasonable stipend, the amount of which shall be established in the request for proposal,
184 to each prequalified design-builder whose proposal is responsive but not accepted. Upon
185 payment of the stipend to any unsuccessful design-builder, the political subdivision shall
186 acquire a nonexclusive right to use the design submitted by the design-builder, and the
187 design-builder shall have no further liability for the use of the design by the political
188 subdivision in any manner. If the design-builder desires to retain all rights and interest
189 in the design proposed, the design-builder shall forfeit the stipend.

190 16. The payment bond requirements of section 107.170 shall apply to the
191 design-build project. All persons furnishing design services shall be deemed to be covered
192 by the payment bond the same as any person furnishing labor and materials; however, the
193 performance bond for the design-builder does not need to cover the design services as long
194 as the design-builder or its subcontractors providing design services carry professional
195 liability insurance in an amount established by the political subdivision in the request for
196 proposals.

197 17. Any person or firm providing architectural, engineering, landscape
198 architecture, or land-surveying services for the design-builder on the design-build project
199 shall be duly licensed or authorized in this state to provide such services as required by
200 chapter 327.

201 18. A political subdivision planning a design-build project shall retain an architect
202 or engineer, as appropriate to the project type and duly licensed in this state, to assist with

203 the design criteria package, preparation of the request for proposals, prequalification of
204 design-builders, and evaluation of proposals.

205 **19. Under section 327.465, any design-builder that enters into a design-build**
206 **contract with a political subdivision is exempt from the requirement that such person or**
207 **entity hold a certificate of registration or that such corporation hold a certificate of**
208 **authority if the architectural, engineering, or land-surveying services to be performed**
209 **under the contract are performed through subcontracts with properly licensed and**
210 **authorized persons or entities, and not performed by the design-builder or its own**
211 **employees.**

212 **20. The authority to use design-build and design-build contracts provided under**
213 **this section shall expire September 1, 2025.**

67.5070. 1. As used in this section, the following terms mean:

2 **(1) “Specialty construction”, construction the scope of which is limited, dealing with**
3 **only a specific trade and directly related and ancillary work, and requiring special skill**
4 **and specialized building trades or crafts, and which may contain a proprietary component;**
5 **and**

6 **(2) “Specialty construction design”, a design for specialty construction by a design**
7 **professional on behalf of the political subdivision for the contractor.**

8 **2. A political subdivision may require a contractor to provide a specialty**
9 **construction design as a portion of a construction contract, provided that it is specified in**
10 **the bid documents written by a design professional.**

11 **3. In disbursing community development block grants under 42 U.S.C. Sections**
12 **5301 to 5321, the department of economic development shall not reject wastewater or water**
13 **treatment projects solely for utilizing specialty construction or specialty construction**
14 **design contracts.**

15 **4. The department of natural resources shall not preclude specialty construction**
16 **or specialty construction design contracts from consideration of funding provided by the**
17 **water and wastewater loan fund established in section 644.122.**

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