

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 844
98TH GENERAL ASSEMBLY

1824H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 8.683 and 8.685, RSMo, and to enact in lieu thereof three new sections relating to construction management.

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Section A. Sections 8.683 and 8.685, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 8.683, 8.685, and 67.5050, to read as follows: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] **but only if such construction manager submits a sealed bid to the public owner in the same manner as a trade contractor.** The actual construction work on the project shall be awarded by competitive bidding as provided by law. All successful bidders shall contract directly with the public owner[, but] **and** shall perform at the direction of the construction manager unless otherwise provided in the construction manager's contract with the public owner. All successful bidders **that contract directly with the public owner** shall

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.

19 provide payment and performance bonds to the public owner. All successful bidders shall meet
20 all the obligations of a prime contractor to whom a contract is awarded, pertaining to the
21 payment of prevailing wages pursuant to sections 290.210 to 290.340. In addition, all
22 nonresident employers shall meet the bonding and registration requirements of sections 285.230
23 to 285.234.

8.685. [No] Construction management services [contract] may be awarded by a public
2 owner on a negotiated basis as provided herein [if] **regardless of whether** the construction
3 manager, or a firm that controls, is controlled by, or shares common ownership or control with
4 the construction manager, guarantees, warrants, or otherwise assumes financial responsibility for
5 the work [of others] on the project; or provides the public owner with a guaranteed maximum
6 price for the work [of others] on the project; or furnishes or guarantees a performance or payment
7 bond for [other contractors on] the project. In any such case, [the contract for construction
8 management services shall be let by competitive bidding as in the case of contracts] **the**
9 **construction manager may enter into contracts with the successful bidders** for construction
10 work.

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

2 (1) **"Design-build", a method of project delivery where the design and construction**
3 **services are furnished under one contract;**

4 (2) **"Design-build contract", a contract between a political subdivision and a**
5 **design-builder to furnish the architectural, engineering, and related design services and**
6 **the labor, materials, and other construction services required for a specific construction**
7 **project;**

8 (3) **"Design-build project", the design construction, alteration, addition,**
9 **remodeling, or improvement of any real property, buildings, or other facilities under**
10 **contract with a political subdivision;**

11 (4) **"Design-builder", any individual, partnership, joint venture, corporation, or**
12 **other legal entity that furnishes architecture, engineering, or construction services either**
13 **directly or through subcontracts;**

14 (5) **"Design criteria package", performance-oriented specifications for the**
15 **design-build project sufficient to permit a design-builder to prepare a response to the**
16 **political subdivision's request for proposals for a design-build project, which may include**
17 **preliminary designs for the project or portions thereof.**

18 2. (1) **In using a design-build contract, the political subdivision shall establish a**
19 **written procedure for prequalifying design-builders before such design-builders will be**
20 **allowed to make a proposal on the design-build project.**

21 (2) **The political subdivision shall adopt procedures for:**

- 22 (a) The prequalification review team;
- 23 (b) Specifications for the design criteria package;
- 24 (c) The method of advertising, receiving, and evaluating proposals from
25 design-builders;
- 26 (d) The criteria for awarding the design-build contract based on the design criteria
27 package. As part of such criteria, the political subdivision shall require a separate
28 proposal from the qualifications proposal stating the cost of design and construction; and
- 29 (e) Other methods, procedures, and criteria necessary to administer this section.
- 30 (3) The political subdivision is authorized to issue a request for proposals to a
31 minimum of three and a maximum of five design-builders who are prequalified in
32 accordance with this section.
- 33 (4) For design-build projects where a proposal includes a guaranteed maximum
34 price, lump sum, or fixed price best-value evaluation as part of the basis of award, the
35 political subdivision shall award a stipend equal to a percentage of the political
36 subdivision's project final budget for design and construction, as prescribed in the request
37 for proposals, but not less than two-tenths of one percent of the project final budget for
38 design and construction to each prequalified offeror who provides a responsive, but
39 unsuccessful, proposal. If the political subdivision does not award a design-build contract,
40 all responsive prequalified offerors shall receive the stipend based on the average of the
41 amounts proposed by the offerors. The agency shall pay the stipend to each prequalified
42 offeror within ninety days after the award of the design-build contract or the decision not
43 to award a contract. In consideration for paying the stipend, the political subdivision may
44 use any ideas or information contained in the unsuccessful proposals in connection with
45 any design-build contract awarded for the project or in connection with a subsequent
46 procurement for the same design-build project, without any obligation to pay any
47 additional compensation to the offerors, and with no liability to the offerors for use of the
48 ideas and information. Notwithstanding the other provisions of this subdivision, an offeror
49 may elect to waive the stipend. If an offeror elects to waive the stipend, the political
50 subdivision may not use ideas and information contained in the offeror's proposal, except
51 that this restriction does not prevent the political subdivision from using any idea or
52 information if the idea or information is also included in a proposal of an offeror that
53 accepts the stipend.
- 54 (5) The political subdivision may require approval of any person or entity
55 performing subcontract or services work on the design-build project including, but not
56 limited to, those furnishing design and construction services, labor, materials, or
57 equipment.

58 **3. (1) Before the prequalification process specified in this section, the political**
59 **subdivision shall publicly advertise, once a week for two consecutive weeks, in a newspaper**
60 **of general circulation, qualified under chapter 493, located within the political subdivision,**
61 **or, if there is no such newspaper, in a qualified newspaper of general circulation in the**
62 **county, or, if there is no such newspaper, in a qualified newspaper of general circulation**
63 **in an adjoining county, and may advertise in business, trade, or minority newspapers, for**
64 **qualification submissions on said design-build project.**

65 **(2) If the political subdivision fails to receive at least two responsive submissions**
66 **from design-builders, submissions shall not be opened and the political subdivision shall**
67 **re-advertise the project.**

68 **(3) The political subdivision shall have the right to reject any and all submissions**
69 **and proposals.**

70 **(4) The proposals from prequalified design-builders shall be submitted sealed and**
71 **in writing, to be opened publicly at the time and place of the political subdivision's**
72 **choosing. The qualifications proposal shall be submitted separately from any cost**
73 **proposal, and shall be opened and ranked prior to opening the cost proposal.**

74 **(5) The design-build contract shall be awarded to the design-builder whose total**
75 **proposal represents the best overall value to the political subdivision in terms of quality,**
76 **technical skill, cost, and schedule.**

77 **(6) No proposal shall be entertained by the political subdivision that is not made**
78 **in accordance with the request for proposals furnished by the political subdivision.**

79 **4. (1) The payment bond requirements of section 107.170 shall apply to the**
80 **design-build project. All persons furnishing design services shall be deemed to be covered**
81 **by the payment bond the same as any person furnishing labor and materials; however, the**
82 **performance bond for the design-builder does not need to cover the design services as long**
83 **as the design-builder or its subcontractors providing design services carry professional**
84 **liability insurance in an amount established by the political subdivision in the request for**
85 **proposals.**

86 **(2) Any person or entity providing architectural, engineering, landscape**
87 **architecture, or land-surveying services for the design-builder on the design-build project**
88 **shall be duly licensed or authorized in this state to provide such services as required by**
89 **chapter 327.**

90 **5. A political subdivision planning a design-build project shall retain an architect**
91 **or engineer, as appropriate to the project type and duly licensed in this state, to assist with**
92 **the design criteria package, preparation of the request for proposals, prequalifying**
93 **design-builders, and evaluation of proposals.**

94 **6. Under section 327.465, any design-builder that enters into a design-build**
95 **contract for a political subdivision is exempt from the requirement that such person or**
96 **entity hold a certificate of registration or that such corporation hold a certificate of**
97 **authority if the architectural, engineering, or land-surveying services to be performed**
98 **under the contract are performed through subcontracts with properly licensed and**
99 **authorized persons or entities, and not performed by the design-builder or its own**
100 **employees.**

101 **7. The provisions of this section shall not apply to any political subdivision that is**
102 **otherwise authorized to utilize design-build practices and procedures.**

✓