

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 844

98TH GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, May 7, 2015, with recommendation that the Senate Committee Substitute do pass.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To amend chapter 67, RSMo, by adding thereto three new sections relating to construction management.

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

Section A. Chapter 67, RSMo, is amended by adding thereto three new sections, to be known as sections 67.5050, 67.5060, and 67.5070, to read as follows:

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

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

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

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

16 3. Before or concurrently with selecting a construction manager-  
17 at-risk, the political subdivision shall select or designate an engineer  
18 or architect who shall prepare the construction documents for the

19 project and who shall comply with all state laws, as applicable. If the  
20 engineer or architect is not a full-time employee of the political  
21 subdivision, the political subdivision shall select the engineer or  
22 architect on the basis of demonstrated competence and qualifications  
23 as provided by sections 8.285 to 8.291. The political subdivision's  
24 engineer or architect for a project may not serve, alone or in  
25 combination with another, as the construction manager-at-risk. This  
26 subsection does not prohibit a political subdivision's engineer or  
27 architect from providing customary construction phase services under  
28 the engineer's or architect's original professional service agreement in  
29 accordance with applicable licensing laws.

30 4. The political subdivision may provide or contract for,  
31 independently of the construction manager-at-risk, inspection services,  
32 testing of construction materials, engineering, and verification of  
33 testing services necessary for acceptance of the project by the political  
34 subdivision.

35 5. The political subdivision shall select the construction  
36 manager-at-risk in a two-step process. The political subdivision shall  
37 prepare a request for qualifications, for the case of the first step of the  
38 two-step process, that includes general information on the project site,  
39 project scope, schedule, selection criteria, and the time and place for  
40 receipt of proposals or qualifications, as applicable, and other  
41 information that may assist the political subdivision in its selection of  
42 a construction manager-at-risk. The political subdivision shall state the  
43 selection criteria in the request for proposals or qualifications, as  
44 applicable. The selection criteria may include the construction  
45 manager's experience, past performance, safety record, proposed  
46 personnel and methodology, and other appropriate factors that  
47 demonstrate the capability of the construction manager-at-risk. The  
48 political subdivision shall not request fees or prices in step one. In  
49 step two, the political subdivision may request that five or fewer  
50 construction managers, selected solely on the basis of qualifications,  
51 provide additional information, including the construction manager-at-  
52 risk's proposed fee and its price for fulfilling the general  
53 conditions. Qualifications shall account for a minimum of forty percent  
54 of the evaluation. Cost shall account for a maximum of sixty percent  
55 of the evaluation.

56           **6. The political subdivision shall publish the request for proposal**  
57 **or qualifications in a manner prescribed by the political subdivision.**

58           **7. For each step, the political subdivision shall receive, publicly**  
59 **open, and read aloud the names of the construction managers. Within**  
60 **forty-five days after the date of opening the proposals or qualification**  
61 **submissions, the political subdivision or its representative shall**  
62 **evaluate and rank each proposal or qualification submission submitted**  
63 **in relation to the criteria set forth in the request for proposals or**  
64 **request for qualifications. The political subdivision shall interview at**  
65 **least two of the top qualified offerors as part of the final selection.**

66           **8. The political subdivision or its representative shall select the**  
67 **construction manager that submits the proposal that offers the best**  
68 **value for the political subdivision based on the published selection**  
69 **criteria and on its ranking evaluation. The political subdivision or its**  
70 **representative shall first attempt to negotiate a contract with the**  
71 **selected construction manager. If the political subdivision or its**  
72 **representative is unable to negotiate a satisfactory contract with the**  
73 **selected construction manager, the political subdivision or its**  
74 **representative shall, formally and in writing, end negotiations with**  
75 **that construction manager and proceed to negotiate with the next**  
76 **construction manager in the order of the selection ranking until a**  
77 **contract is reached or negotiations with all ranked construction**  
78 **managers end.**

79           **9. A construction manager-at-risk shall publicly advertise, in the**  
80 **manner prescribed by chapter 50, and receive bids or proposals from**  
81 **trade contractors or subcontractors for the performance of all major**  
82 **elements of the work other than the minor work that may be included**  
83 **in the general conditions. A construction manager-at-risk may seek to**  
84 **perform portions of the work itself if the construction manager-at-risk**  
85 **submits its sealed bid or sealed proposal for those portions of the work**  
86 **in the same manner as all other trade contractors or subcontractors**  
87 **and if the political subdivision determines that the construction**  
88 **manager-at-risk's bid or proposal provides the best value for the**  
89 **political subdivision. The political subdivision shall have the authority**  
90 **to restrict the construction manager-at-risk from submitting bids to**  
91 **perform portions of the work.**

92           **10. The construction manager-at-risk and the political**

93 subdivision or its representative shall review all trade contractor or  
94 subcontractor bids or proposals in a manner that does not disclose the  
95 contents of the bid or proposal during the selection process to a person  
96 not employed by the construction manager-at-risk, engineer, architect,  
97 or political subdivision involved with the project. All bids or proposals  
98 shall be made public at least four business days prior to the award of  
99 the contract but after all bids are evaluated and clarified.

100       11. If the construction manager-at-risk reviews, evaluates, and  
101 recommends to the political subdivision a bid or proposal from a trade  
102 contractor or subcontractor but the political subdivision requires  
103 another bid or proposal to be accepted, the political subdivision may  
104 compensate the construction manager-at-risk by a change in price,  
105 time, or guaranteed maximum cost for any additional cost and risk that  
106 the construction manager-at-risk may incur because of the political  
107 subdivision's requirement that another bid or proposal be accepted.

108       12. If a selected trade contractor or subcontractor defaults in the  
109 performance of its work or fails to execute a subcontract after being  
110 selected in accordance with this section, the construction manager-at-  
111 risk may itself, without advertising, fulfill the contract requirements  
112 or select a replacement trade contractor or subcontractor to fulfill the  
113 contract requirements. If a fixed contract amount or guaranteed  
114 maximum price has not been determined at the time the contract is  
115 awarded, the penal sums of the performance and payment bonds  
116 delivered to the political subdivision shall each be in an amount equal  
117 to the project budget, as set forth in the request for qualifications. The  
118 construction manager-at-risk shall deliver the bonds not later than the  
119 tenth day after the date the construction manager-at-risk executes the  
120 contract unless the construction manager-at-risk furnishes a bid bond  
121 or other financial security acceptable to the political subdivision to  
122 ensure that the construction manager-at-risk will furnish the required  
123 performance and payment bonds if a guaranteed maximum price is  
124 established.

125       13. The provisions of this section shall not apply to any  
126 metropolitan sewer district established under article VI, section 30(a)  
127 of the Constitution of Missouri or charter city or charter county  
128 governed by home rule under article VI, section 18 or 19 of the  
129 Constitution of Missouri.

130           14. (1) Civil works projects such as roads, streets, bridges,  
131 utilities, water supply projects, water plants, wastewater plants, water  
132 distribution and wastewater conveyance facilities, airport runways and  
133 taxiways, storm drainage and flood control projects, or transit projects  
134 commonly designed by professional engineers shall be limited to those  
135 projects in excess of two million dollars.

136           (2) Non-civil works projects such as buildings, site  
137 improvements, and other structures, habitable or not, commonly  
138 designed by architects shall be limited to those projects in excess of  
139 seven million dollars.

140           15. Notwithstanding the provisions of section 23.253 to the  
141 contrary, the provisions of this section shall expire September 1, 2025.

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

2           (1) "Design-build", a project delivery method subject to  
3 qualifications-based selection for which the design and construction  
4 services are furnished under one contract;

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

11           (3) "Design-build project", the design, construction, alteration,  
12 addition, remodeling, or improvement of any buildings or facilities  
13 under contract with a political subdivision. Such design-build projects  
14 include, but are not limited to:

15           (a) Civil works projects, such as roads, streets, bridges, utilities,  
16 water supply projects, water plants, wastewater plants, water  
17 distribution and wastewater conveyance facilities, airport runways and  
18 taxiways, storm drainage and flood control projects, or transit projects  
19 commonly designed by professional engineers in excess of two million  
20 dollars; and

21           (b) Non-civil works projects, such as buildings, site  
22 improvements, and other structures, habitable or not, commonly  
23 designed by architects in excess of seven million dollars;

24           (4) "Design-builder", any individual, partnership, joint venture,  
25 or corporation subject to a qualification-based selection that offers to

26 provide or provides design services and general contracting services  
27 through a design-build contract in which services within the scope of  
28 the practice of professional architecture or engineering are performed  
29 respectively by a licensed architect or licensed engineer and in which  
30 services within the scope of general contracting are performed by a  
31 general contractor or other legal entity that furnishes architecture or  
32 engineering services and construction services either directly or  
33 through subcontracts or joint ventures;

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

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

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

60 (a) Within the practice of architecture as defined in section  
61 327.091, or within the practice of professional engineering as defined  
62 in section 327.181; or

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

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

69           **(9) "Qualification-based selection", the selection process**  
70 **described in sections 8.285 to 8.291;**

71           **(10) "Request for proposal", the document by which the political**  
72 **subdivision solicits proposals for a design-build contract; and**

73           **(11) "Stipend", an amount paid to the unsuccessful but**  
74 **responsive, short-listed design-builders to defray the cost of**  
75 **participating in phase II of the qualification-based selection process**  
76 **described in this section.**

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

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

94           **4. Notice of requests for proposals shall be advertised in**  
95 **accordance with section 8.250 or by a virtual notice procedure that**  
96 **notifies interested parties for at least twenty various purchases, design**  
97 **contracts, construction contracts, or other contracts each year for the**  
98 **political subdivision. The political subdivision shall publish a notice**  
99 **of a request for proposal with a description of the project, the**

100 procedures for submission, and the selection criteria to be used.

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

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

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

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

112           (3) The design criteria package;

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

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

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

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

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

128           7. The political subdivision shall solicit proposals in a three-  
129 stage process. Phase I shall be the solicitation of qualifications of the  
130 design-build team. Phase II shall be the solicitation of a technical  
131 proposal including conceptual design for the project. Phase III shall be  
132 the proposal of the construction cost.

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

136           9. Phase I shall require all design-builders to submit a statement



137 of qualification that shall include, but not be limited to:

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

140 (2) References of owners for whom design-build projects,  
141 construction projects, or design projects have been performed;

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

144 (4) The names and qualifications of the primary design  
145 consultants and the primary trade contractors with whom the design-  
146 builder proposes to subcontract or joint venture. The design-builder  
147 may not replace an identified contractor, subcontractor, design  
148 consultant, or subconsultant without the written approval of the  
149 political subdivision; and

150 (5) The approximate percentage of ownership by design  
151 professionals of the legal entity of the design-builder or legal entity  
152 that contracts with the design-builder.

153 10. The political subdivision shall evaluate the qualifications of  
154 all the design-builders who submitted proposals in accordance with the  
155 instructions of the request for proposal. Architectural and engineering  
156 services on the project shall be evaluated in accordance with the  
157 requirements of sections 8.285 and 8.291. Qualified design-builders  
158 selected by the evaluation team may proceed to phase II of the  
159 selection process. Design-builders lacking the necessary qualifications  
160 to perform the work shall be disqualified and shall not proceed to  
161 phase II of the process. This process of short listing shall narrow the  
162 number of qualified design-builders to not more than five or fewer than  
163 two. Under no circumstances shall price or fees be a part of the  
164 prequalification criteria. Points assigned in phase I of the evaluation  
165 process shall not carry forward to phase II of the process. All qualified  
166 design-builders shall be ranked on points given in phases II and III  
167 only.

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

171 12. Once a sufficient number of no more than five and no fewer  
172 than two qualified design-builders have been selected, the design-  
173 builders shall have a specified amount of time in which to assemble

174 **phase II and phase III proposals.**

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

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

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

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

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

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

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

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

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

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

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

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

223 (5) If the political subdivision determines that it is not in the  
224 best interest of the political subdivision to proceed with the project  
225 pursuant to the proposal offered by the design-builder with the highest  
226 total number of points, the political subdivision shall reject all  
227 proposals. In this event, all qualified and responsive design-builders  
228 with lower point totals shall receive a stipend and the responsive  
229 design-builder with the highest total number of points shall receive an  
230 amount equal to two times the stipend. If the political subdivision  
231 decides to award the project, the responsive design-builder with the  
232 highest number of points shall be awarded the contract; and

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

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

248           16. The payment bond requirements of section 107.170 shall  
249 apply to the design-build project. All persons furnishing design  
250 services shall be deemed to be covered by the payment bond the same  
251 as any person furnishing labor and materials; however, the  
252 performance bond for the design-builder does not need to cover the  
253 design services as long as the design-builder or its subcontractors  
254 providing design services carry professional liability insurance in an  
255 amount established by the political subdivision in the request for  
256 proposals.

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

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

269           19. The provisions of this section shall not apply to any  
270 metropolitan sewer district established under article VI, section 30(a)  
271 of the Constitution of Missouri or charter city or charter county  
272 governed by home rule under article VI, section 18 or 19 of the  
273 Constitution of Missouri.

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

          67.5070. 1. As used in this section, "specialty construction design"  
2 means any contract that involves the provision of engineering and  
3 construction services either directly by a party to the contract or  
4 through subcontractors retained by a party to the contract.

5           2. Any political subdivision may enter into a special construction  
6 design contract for engineering, design, and construction of a  
7 wastewater or water treatment project.

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

10 shall not reject wastewater or water treatment projects solely for  
11 utilizing specialty construction design contracts.

12 4. The department of natural resources shall not preclude  
13 specialty construction design contracts from consideration for funding  
14 provided by the water and wastewater loan fund under section 644.122.

15 5. A political subdivision planning a specialty construction  
16 design project shall retain an engineer duly licensed in this state to  
17 assist in preparing any necessary bid documents and specifications and  
18 evaluations of submissions and bids.

✓