

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 326,
2 Page 9, Section 67.950, Line 79, by inserting immediately after said line the following:

3
4 "67.5050. 1. As used in this section, the following terms mean:

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

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

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

14 3. Before or concurrently with selecting a construction manager-at-risk, the political
15 subdivision shall select or designate an engineer or architect who shall prepare the construction
16 documents for the project and who shall comply with all state laws, as applicable. If the engineer or
17 architect is not a full-time employee of the political subdivision, the political subdivision shall select
18 the engineer or architect on the basis of demonstrated competence and qualifications as provided by
19 sections 8.285 to 8.291. The political subdivision's engineer or architect for a project may not serve,
20 alone or in 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 construction phase
22 services under the engineer's or architect's original professional service agreement in accordance
23 with applicable licensing laws.

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

27 5. The political subdivision shall select the construction manager-at-risk in a two-step
28 process. The political subdivision shall prepare a request for qualifications, for the case of the first
29 step of the two-step process, that includes general information on the project site, project scope,
30 schedule, selection criteria, and the time and place for receipt of proposals or qualifications, as
31 applicable, and other information that may assist the political subdivision in its selection of a
32 construction manager-at-risk. The political subdivision shall state the selection criteria in the request
33 for proposals or qualifications, as applicable. The selection criteria may include the construction
34 manager's experience, past performance, safety record, proposed personnel and methodology, and
35 other appropriate factors that demonstrate the capability of the construction manager-at-risk. The
36 political subdivision shall not request fees or prices in step one. In step two, the political subdivision

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1 may request that five or fewer construction managers, selected solely on the basis of qualifications,
2 provide additional information, including the construction manager-at-risk's proposed fee and its
3 price for fulfilling the general conditions. Qualifications shall account for a minimum of forty
4 percent of the evaluation. Cost shall account for a maximum of sixty percent of the evaluation.

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

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

13 8. The political subdivision or its representative shall select the construction manager that
14 submits the proposal that offers the best value for the political subdivision based on the published
15 selection criteria and on its ranking evaluation. The political subdivision or its representative shall
16 first attempt to negotiate a contract with the selected construction manager. If the political
17 subdivision or its representative is unable to negotiate a satisfactory contract with the selected
18 construction manager, the political subdivision or its representative shall, formally and in writing,
19 end negotiations with that construction manager and proceed to negotiate with the next construction
20 manager in the order of the selection ranking until a contract is reached or negotiations with all
21 ranked construction managers end.

22 9. A construction manager-at-risk shall publicly advertise, in the manner prescribed by
23 chapter 50, and receive bids or proposals from trade contractors or subcontractors for the
24 performance of all major elements of the work other than the minor work that may be included in the
25 general conditions. A construction manager-at-risk may seek to perform portions of the work itself
26 if the construction manager-at-risk submits its sealed bid or sealed proposal for those portions of the
27 work in the same manner as all other trade contractors or subcontractors and if the political
28 subdivision determines that the construction manager-at-risk's bid or proposal provides the best value
29 for the political subdivision. The political subdivision shall have the authority to restrict the
30 construction manager-at-risk from submitting bids to perform portions of the work.

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

37 11. If the construction manager-at-risk reviews, evaluates, and recommends to the political
38 subdivision a bid or proposal from a trade contractor or subcontractor but the political subdivision
39 requires another bid or proposal to be accepted, the political subdivision may compensate the
40 construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any
41 additional cost and risk that the construction manager-at-risk may incur because of the political
42 subdivision's requirement that another bid or proposal be accepted.

43 12. If a selected trade contractor or subcontractor defaults in the performance of its work or
44 fails to execute a subcontract after being selected in accordance with this section, the construction
45 manager-at-risk may itself, without advertising, fulfill the contract requirements or select a
46 replacement trade contractor or subcontractor to fulfill the contract requirements. If a fixed contract
47 amount or guaranteed maximum price has not been determined at the time the contract is awarded,
48 the penal sums of the performance and payment bonds delivered to the political subdivision shall

1 each be in an amount equal to the project budget, as set forth in the request for qualifications. The
 2 construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the
 3 construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes
 4 a bid bond or other financial security acceptable to the political subdivision to ensure that the
 5 construction manager-at-risk will furnish the required performance and payment bonds if a
 6 guaranteed maximum price is established.

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

10 14. (1) Civil works projects such as roads, streets, bridges, utilities, water supply projects,
 11 water plants, wastewater plants, water distribution and wastewater conveyance facilities, airport
 12 runways and taxiways, storm drainage and flood control projects, or transit projects commonly
 13 designed by professional engineers shall be limited to those projects in excess of two million dollars.

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

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

19 67.5060. 1. As used in this section, the following terms mean:

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

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

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

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

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

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

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

1 design or construction services for the design-build contract for which its services were sought;

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

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

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

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

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

18 (9) "Qualification-based selection", the selection process described in sections 8.285 to
19 8.291;

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

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

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

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

37 4. Notice of requests for proposals shall be advertised in accordance with section 8.250 or by
38 a virtual notice procedure that notifies interested parties for at least twenty various purchases, design
39 contracts, construction contracts, or other contracts each year for the political subdivision. The
40 political subdivision shall publish a notice of a request for proposal with a description of the project,
41 the procedures for submission, and the selection criteria to be used.

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

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

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

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

2 (3) The design criteria package;

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

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

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

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

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

15 7. The political subdivision shall solicit proposals in a three-stage process. Phase I shall be
16 the solicitation of qualifications of the design-build team. Phase II shall be the solicitation of a
17 technical proposal including conceptual design for the project. Phase III shall be the proposal of the
18 construction cost.

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

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

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

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

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

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

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

35 10. The political subdivision shall evaluate the qualifications of all the design-builders who
36 submitted proposals in accordance with the instructions of the request for proposal. Architectural
37 and engineering services on the project shall be evaluated in accordance with the requirements of
38 sections 8.285 and 8.291. Qualified design-builders selected by the evaluation team may proceed to
39 phase II of the selection process. Design-builders lacking the necessary qualifications to perform the
40 work shall be disqualified and shall not proceed to phase II of the process. This process of short
41 listing shall narrow the number of qualified design-builders to not more than five or fewer than two.
42 Under no circumstances shall price or fees be a part of the prequalification criteria. Points assigned
43 in phase I of the evaluation process shall not carry forward to phase II of the process. All qualified
44 design-builders shall be ranked on points given in phases II and III only.

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

47 12. Once a sufficient number of no more than five and no fewer than two qualified
48 design-builders have been selected, the design-builders shall have a specified amount of time in

1 which to assemble phase II and phase III proposals.

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

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

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

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

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

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

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

18 14. Phase III shall be conducted as follows:

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

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

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

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

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

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

47 15. As an inducement to qualified design-builders, the political subdivision shall pay a
48 reasonable stipend, the amount of which shall be established in the request for proposal, to each

1 prequalified design-builder whose proposal is responsive but not accepted. Such stipend shall be no
2 less than one-half of one percent of the total project budget. Upon payment of the stipend to any
3 unsuccessful design-builder, the political subdivision shall acquire a nonexclusive right to use the
4 design submitted by the design-builder, and the design-builder shall have no further liability for the
5 use of the design by the political subdivision in any manner. If the design-builder desires to retain all
6 rights and interest in the design proposed, the design-builder shall forfeit the stipend.

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

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

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

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

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

27 67.5070. 1. As used in this section, "specialty construction design" means any contract that
28 involves the provision of engineering and construction services either directly by a party to the
29 contract or through subcontractors retained by a party to the contract.

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

32 3. In disbursing community development block grants under 42 U.S.C. Sections 5301 to
33 5321, the department of economic development shall not reject wastewater or water treatment
34 projects solely for utilizing specialty construction design contracts.

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

38 5. A political subdivision planning a specialty construction design project shall retain an
39 engineer duly licensed in this state to assist in preparing any necessary bid documents and
40 specifications and evaluations of submissions and bids."; and

41
42 Further amend said bill by amending the title, enacting clause, and intersectional references
43 accordingly.