

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 844, Page 5, Section 67.5050, line 102, by
2 inserting immediately after said line the following:

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4 " 67.5060 1. As used in this section, the following terms mean:

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

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

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

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

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

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

27 (5) "Design criteria consultant", a person, corporation, partnership, or other legal entity duly
28 licensed and authorized to practice architecture or professional engineering in this state under
29 chapter 327, who is employed by or contracted by the political subdivision to assist the political
30 subdivision in the development of project design criteria, requests for proposals, evaluation of
31 proposals, the evaluation of the construction under a design-build contract to determine adherence to

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1 the design criteria, and any additional services requested by the political subdivisions to represent its
2 interests in relation to a project. The design criteria consultant may not submit a proposal or furnish
3 design or construction services for the design-build contract for which its services were sought;

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

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

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

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

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

20 (9) "Qualification-based selection", the selection process described in sections 8.285 to
21 8.291;

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

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

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

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

39 4. Notice of requests for proposals shall be advertised in accordance with section 8.250 or by
40 a virtual notice procedure that notifies interested parties for at least twenty various purchases, design
41 contracts, construction contracts, or other contracts each year for the political subdivision. The

1 political subdivision shall publish a notice of a request for proposal with a description of the project,
2 the procedures for submission, and the selection criteria to be used.

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

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

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

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

11 (3) The design criteria package;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 12. Once a sufficient number of no more than five and no fewer than two qualified
16 design-builders have been selected, the design-builders shall have a specified amount of time in
17 which to assemble phase II and phase III proposals.

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

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

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

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

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

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

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

34 14. Phase III shall be conducted as follows:

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

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

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

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

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

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

22 15. As an inducement to qualified design-builders, the political subdivision shall pay a
23 reasonable stipend, the amount of which shall be established in the request for proposal, to each
24 prequalified design-builder whose proposal is responsive but not accepted. Such stipend shall be no
25 less than one-half of one percent of the total project budget. Upon payment of the stipend to any
26 unsuccessful design-builder, the political subdivision shall acquire a nonexclusive right to use the
27 design submitted by the design-builder, and the design-builder shall have no further liability for the
28 use of the design by the political subdivision in any manner. If the design-builder desires to retain all
29 rights and interest in the design proposed, the design-builder shall forfeit the stipend.

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

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

39 18. Under section 327.465, any design-builder that enters into a design-build contract with a
40 political subdivision is exempt from the requirement that such person or entity hold a license or that
41 such corporation hold a certificate of authority if the architectural, engineering, or land-surveying

1 services to be performed under the design-build contract are performed through subcontracts or joint
2 ventures with properly licensed or authorized persons or entities, and not performed by the
3 design-builder or its own employees.

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

7 20. The authority to use design-build and design-build contracts provided under this section
8 shall expire September 1, 2025."; and

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10 Further amend said bill by amending the title, enacting clause, and intersectional references
11 accordingly.
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