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Missouri Expands Project Delivery Options For Public Works Projects: Thompson Coburn

The State of Missouri recently joined a [majority of states](#) allowing political subdivisions to make use of design-build and construction manager-at-risk contracts for public works projects. The new law, signed on July 1, 2016, permits political subdivisions (such as state agencies, counties, municipalities, school districts, hospital districts, and sewer districts) to utilize project delivery methods that are widely used in private construction projects.

History of Construction Delivery

Missouri political subdivisions (with some exceptions) are required to engage in traditional design-bid-build delivery of projects (i.e., the public body selects an architect based on qualifications, then picks the low-bidding contractor following completion of design). For more complex projects, public bodies could engage a construction manager, but the CM is not permitted to perform any construction or provide a price guarantee (this is commonly referred to as construction manager as agent).

New Law

The new statute allows political subdivisions to engage a construction manager-at-risk, where the contractor is engaged prior to completion of construction documents, provides preconstruction services for the owner during the design process, and typically provides a guaranteed maximum price or fixed price after the construction documents are complete. The new statute also permits design-build, where the contractor is responsible for both the design and construction of the project (and holds all of the design and engineering contracts). Public bodies now have increased flexibility in choice of delivery method, which they hope will result in time and cost savings for their projects.

Overview of New Parameters

Because the use of each construction method is only permitted under certain circumstances and procedures, we've created a chart that outlines the requirements of each construction method under the new statutes:

	Design-Build (RSMo 67.5060)	CM At-Risk (RSMo 67.5050)
Bidding	<p>Three Phases:</p> <p>Phase I – Solicitation of qualifications of the design-build team, including list of required submissions</p> <p>Phase II – Technical proposal including conceptual design (2-5 firms)</p> <p>Phase III – Proposal of construction cost</p>	<p>Two Steps:</p> <p>Step I – Purely qualitative submission; no fees or pricing</p> <p>Step II – Five or less firms selected solely on basis of qualifications provide proposed fee and price for fulfilling general conditions</p>
Award	<p>Phase II: Qualifications: ≤ 20% of total points; Phase II must account for ≥ 40% of total point score as specified in the RFP</p> <p>Phase III must account for ≥ 40% of total point score as specified in the RFP</p>	<p>Qualifications: ≥ 40% of total points, Cost: ≤ 60% of total points</p>
Timing for Evaluation of Bids	No requirement	Evaluation and ranking of bids must occur within 45 days after date of opening the proposals or qualification submissions
Publication of Request for RFP	Newspaper of general circulation in the county where the political subdivision is located once per week for two consecutive weeks prior to opening proposals.	Same
Thresholds for Use (\$)	<p>Civil Works: None</p> <p>Non-Civil Works: > \$7 Million</p>	<p>Civil Works: > \$2 Million</p> <p>Non-Civil Works: > \$3 Million</p>
Bid Stipend	Amount set in RFP (not less than 0.5% of total project budget) must be paid by political subdivision to each prequalified design-builder whose proposal is responsive but not accepted; bidder provides nonexclusive license to use design submitted without any liability for use of such design	None
Sunset	September 1, 2026	September, 1, 2026

The full text of HB 2376 (2016) is available [here](#).

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.