

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbolology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 1—OFFICE OF ADMINISTRATION**  
**Division 30—Division of Facilities Management,**  
**Design and Construction**  
**Chapter 3—Capital Improvement and Maintenance**  
**Program**

**PROPOSED AMENDMENT**

1 CSR 30-3.025 *[Methods of Management/Construction] Procurement of Construction and Management Services*. The Division of Facilities Management, Design and Construction is amending the title and purpose statement of this regulation, moving the information found in section (5), deleting sections (7) and (9), renumbering the remaining sections and adding new sections.

*PURPOSE: This amendment deletes provisions regarding the use of best value contracting and construction manager at-risk. This amendment also adds information regarding contractor responsibility*

*currently found in 1 CSR 30-3.060, which is currently in the process of being rescinded. The information incorporated from 1 CSR 30-3.060 and the remainder of the rule has been revised and reorganized to better reflect FMDC's current practices and to increase the readability of the regulation. Most significantly, this information was revised to recognize the use of standing contracts other than job order contracting and to use the industry term "suspension" rather than "ineligibility" when referring to a decision to bar a contractor from performing work on a state contract for a temporary period of time.*

*PURPOSE: This rule sets forth the methods and procedures for selection of project[//] construction and management services[, construction management at risk services, job order contracts, design/build contracts, pre-qualification and best value performance based contracts].*

(1) **Definitions.** As used in this regulation and the remainder of this chapter, the following terms mean:

(A) "Affiliate," a person who directly or indirectly controls, or has the power to control, another person or a person who is subject to the control of another person. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees or a business entity organized following the suspension or debarment of a person that has the same or similar management, ownership or principal employees as the debarred or suspended person;

(B) "Bidder," a person who submits a proposal for a construction contract in accordance with 1 CSR 30-3, or one who offers to or subcontracts to a person who submits a proposal for a construction contract;

(C) "Bid documents," a document or documents by which the division solicits proposals for a contract;

(D) "Commissioner," the Commissioner of the State of Missouri, Office of Administration;

(E) "Competitive bid," a process of advertising for bids in accordance with section 8.250, RSMo or solicitation of bids from a minimum of three (3) contractors in which an award is based on the lowest responsive, responsible bid or other pre-established criteria where cost is a factor;

(F) "Debarment," the exclusion of a contractor from performing work on a state project for an indefinite period of time;

(G) "Design-build," a project for which the design and construction services are furnished under one contract;

(H) "Design-build contract," a contract between the division and a design-builder, to furnish the architecture or engineering and related design services necessary for a given public construction project and to furnish the labor, materials, and other construction services for the same public project;

(I) "Design-builder," any individual, partnership, joint venture, corporation, or other legal entity that furnishes both the architectural or engineering services and construction services for a project, whether itself or through subcontracts;

(J) "Design criteria consultant," a person, corporation, partnership, or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to Chapter 327, RSMo, and who is employed by contract to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;

(K) "Design criteria package," performance-oriented program, scope and specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;

(L) "Design services," services that are—

1. Within the practice of professional engineering as defined

in section 327.181, RSMo, or the practice of architecture as defined in section 327.091, RSMo; or

2. Performed by a registered architect or professional engineer in connection with the architect's or professional engineer's employment or practice;

(M) "Director," the director of the Division of Facilities Management, Design and Construction;

(N) "Division," the State of Missouri, Office of Administration, Division of Facilities Management, Design and Construction;

(O) "Evaluation team," a group of people selected by the director to evaluate bidders' qualifications or proposals;

(P) "Job order contract," a standing contract where the prices for work are determined by specifying one (1) or more published construction unit price books and the applicable divisions or line items and/or providing a list of work items and requiring the bidders to bid or propose one (1) or more coefficients or multipliers to be applied to the price book or work items as the price proposal;

(Q) "Person," an individual, corporation, partnership, association, or legal entity;

(R) "Principal," an officer, director, owner, partner, key employee, or other person within an organizational structure having the authority to obligate the bidder in a contractual relationship;

(S) "Proposal," an offer to enter into a contract, including bids submitted in a competitive bidding process;

(T) "Public construction project," the process of designing, constructing, reconstructing, altering, or renovating state owned real property;

(U) "Request for proposals," a document by which the division solicits proposals for a contract;

(V) "Standing Contract," a contract for construction, renovation, maintenance, and/or repair services to be performed during a specified period of time where the delivery times and quantities of work are indefinite, and the cost of orders for work to be performed under the contract is based on predetermined rates;

(W) "Stipend," an amount paid to the unsuccessful proposers to defray the cost of submission of phase II of the design-build proposal;

(X) "Suspension," the exclusion of a contractor from performing work on a state project for a temporary period of time.

## (2) Competitive Bidding.

(A) Soliciting Bids. Section 8.250, RSMo requires that bids be solicited for work on public construction projects. When appropriate, solicitation for bids will go beyond the minimum requirements of the statutes and/or this rule. Notice of solicitation for bids on projects in major metropolitan areas will be sent to minority contractor assistance organizations. Solicitation for bids is authorized only after review and approval of drawings and specifications have been completed in accordance with 1 CSR 30-3.030.

1. Projects costing more than twenty-five thousand dollars (\$25,000). Projects costing more than twenty-five thousand dollars (\$25,000) will have solicitation advertised in accordance with section 8.250, RSMo. In addition, when appropriate, individual firms will be contacted to determine and/or solicit their interest.

2. Projects costing twenty-five thousand dollars (\$25,000) or less. Projects costing twenty-five thousand dollars (\$25,000) or less will be referred to in these regulations as small projects. Small projects may be accomplished using standing contracts or individually procured by the agency in accordance with the current policies of the Division of Facilities Management Design and Construction.

### 3. Emergency projects.

A. Projects for emergency repairs the cost of which exceeds twenty-five thousand dollars (\$25,000) require approval

of the director. Requests should include scope, source of funding and, when appropriate, drawings, specifications and proposal forms.

B. The director may waive the requirement of competitive bids for construction projects when the director has determined that there exists a threat to life, property, public health, or public safety or when immediate projects are necessary for repairs to state property in order to protect against further loss of, or damage to, state property, to prevent or minimize serious disruption in state services or to ensure the integrity of state records. Emergency contracts for construction shall be made with as much competition as is practicable under the circumstances.

C. For emergency repair projects, firms that are available and competent to perform the necessary work will be invited to visit the site for examination and discussion of the work. Attending firms will be provided with available drawings, specifications, proposal forms, and instructions for submitting proposals. Telephone bids for an hourly rate with a "total not to exceed" amount may be accepted.

D. Work included in an emergency request for proposals shall be held to the minimum necessary to eliminate hazards and/or prevent further damage. Corrective work shall not be included in the emergency request, but incorporated into a separate project for later solicitation.

4. Project related equipment. If it is determined that it is necessary or expedient for project related equipment or materials to be separately procured, the Division of Facilities Management, Design and Construction will prepare the necessary specifications and procure the equipment using appropriate competitive bidding procedures.

(B) Pre-Bid Conference. When appropriate, a pre-bid conference will be held at the project site. Interested firms will be invited to inspect and discuss the project work. Answers and clarification to substantive questions raised at the pre-bid conference will be published in an addendum distributed to all plan holders having made deposits.

(C) Addenda. Substantive changes or clarifications established between the times of solicitation and receipt of proposals will be issued as addenda to all plan holders who hold plans. Sufficient time, including an extension if necessary, will be allowed for addenda to be received, considered and incorporated into proposals submitted for the work.

(D) Receipt and Opening of Proposals. Unless otherwise approved by the director, all proposals will be received at the office of the division. Proposals received in response to a solicitation shall be held secure until the bid opening. If requested in writing and properly identified prior to the set date and time for opening, proposals may be returned to the firm making the submission. At the set date and time, all proposals received shall be opened and made public. Proposals received after the set date and time for openings shall be returned unopened to the firm making the late submission. For good and sufficient cause, in the best interest of Missouri, the director may reject any or all proposals.

(E) Evaluation of Proposals. Proposals received shall be evaluated based on the method of procurement as defined in the bid documents within the available appropriations. When several appropriation items are combined in a single lump sum bid item, the total price for the single bid item shall not exceed the total of the amounts appropriated for all the included items.

(F) Contracts. Approval by the director of a contract for a project costing twenty-five thousand dollars (\$25,000) or more will be granted only after review and approval of drawings and specifications in accordance with 1 CSR 30-3.030.

1. Award of contracts shall be made to the bidder successfully meeting the requirements of the bid documents within the available appropriations.

2. Intent to Award. An intent to award letter will be issued

to the successful bidder upon approval by the director. The purpose of the intent to award letter is to notify the successful bidder of their selection so they may obtain the insurance, performance bond, and other documentation necessary to allow the notice to proceed to be issued.

3. **Contract Documents.** Contract documents may require, as appropriate, performance/payment bond, Workers' Compensation insurance, comprehensive general liability and property damage insurance, automobile public liability and damage insurance, owner's protection liability insurance, builder's risk (or installation floater) insurance, and special hazard insurance. The director or his/her designee will determine the form and items required to provide the complete contract documents. Evidence of these items shall be furnished on the forms and in amounts determined by the director to be necessary and/or in compliance with current statutes. In addition, drawings and specifications on which proposals were submitted shall be incorporated by reference in the contract signed by the successful bidder. Contracts shall not be approved until these contract documents, properly executed, are received by the director. The director has discretion to reject any insurer for bond and insurance tendered. Failure to perform on a prior contract may be cause for rejection of an insurer. Failure to furnish the mandatory contract documents in a reasonable time may be treated by the director as refusal to accept the contract and/or execute the contract.

4. **Notice to Proceed.** Notice to proceed with work on a project will be issued by the director, or his/her designee, and work on a project will not be authorized until a notice is issued. This notice shall be issued only after encumbrance of funds for the contract.

### (3) Pre-qualification.

[(1)](A) **Criteria.** The [D]division [of Facilities Management, Design and Construction] may require pre-qualification of bidders when the construction project to be bid[:]-

- [(A)]1. Is highly specialized as to the work to be performed;
- [(B)]2. Requires significant experience in the method of construction specified;
- [(C)]3. Requires specialized equipment and experience with such equipment;
- [(D)]4. Requires specific expertise in the installation of sophisticated equipment, systems, or controls;
- [(E)]5. Requires a minimum level of training or certification from specified equipment manufacturers;
- [(F)]6. Must be completed within a critical time frame; or
- [(G)]7. Requires higher than "industry standard" quality control.

[(2)](B) **Selection.** The director [shall] will select those projects for which pre-qualification of bidders is appropriate.

[(3)](C) **Procedure.** The pre-qualification process [shall] will be a one-step process. The division shall prepare a request for qualifications for specific selected project with a description of the project, the rationale for the decision to pre-qualify bidders, the procedures for submittal and the selection criteria to be used. Notice of the request for qualifications shall be advertised in accordance with section 8.250, RSMo [Supp. 2007]. [The division shall publish a notice of the request for qualifications with a description of the project, the rationale for the decision to pre-qualify bidders, the procedures for submittal and t]The selection criteria to be used[, which] in the pre-qualification may include[:]-

- [(A)]1. Experience of the bidder with similar projects;
- [(B)]2. Experience of key personnel proposed for project;
- [(C)]3. List of recent projects of similar scope and value;
- [(D)]4. Bonding capacity;
- [(E)]5. List of specified equipment available to bidder;
- [(F)]6. References;
- [(G)]7. Safety records;

[(H)]8. Previous project completion schedules;

[(I)]9. Previous project contract change rates; and

[(J)]10. Qualifications of subcontractors proposed for specified areas of work.

[(4)](D) **Evaluation.** An evaluation team consisting of at least three (3) representatives of the division shall be selected by the director to evaluate the qualifications submitted by all potential bidders. [The team shall consist of at least three (3) representatives of the division.]

[(A)]1. The evaluation team shall review the submittals of the potential bidders and assign points to each submittal in accordance with the criteria established for the project and as set out in the instructions of the request for qualifications.

[(B)]2. All potential bidders obtaining a pre-determined number of points shall be pre-qualified to submit a bid on the project on a date specified.

[(C)]3. Only bids from pre-qualified bidders will be accepted and opened. Bid evaluation shall be on the basis of the lowest, responsive, responsible bidder.

### [(5) Definitions:

(A) "Best value performance based contracting," a project procurement method that allows the division to consider factors in addition to price, such as, past performance, risk assessment and designer/contractor interviews when selecting a designer/contractor. The process uses performance information to select the best value designer/contractor in conjunction with price proposals;

(B) "Competitive bid," a process of advertising for bids in accordance with section 8.250, RSMo or solicitation of bids from a minimum of three (3) contractors in which an award is based on the lowest responsive, responsible bid or other pre-established criteria where cost is a factor;

(C) "Construction manager-at-risk," a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the Division of Facilities Management, Design and Construction regarding construction during and after the design of the facility;

(D) "Design-build," a project for which the design and construction services are furnished under one contract;

(E) "Design-build contract," a contract between the division and a design-builder, to furnish the architecture or engineering and related design services required for a given public construction project and to furnish the labor, materials, and other construction services for the same public project;

(F) "Design-builder," any individual, partnership, joint venture, corporation, or other legal entity that furnishes the architectural or engineering services and construction services, whether itself or through subcontracts;

(G) "Design criteria consultant," a person, corporation, partnership, or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to Chapter 327, RSMo, and who is employed by contract to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;

(H) "Design criteria package," performance-oriented program, scope and specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;

(I) "Design services," services that are:

1. Within the practice of professional engineering as defined in section 327.181, RSMo or the practice of architecture as defined in section 327.091, RSMo; or

2. Performed by a registered architect or professional

engineer in connection with the architect's or professional engineer's employment or practice;

(J) "Director," the director of the Division of Facilities Management, Design and Construction;

(K) "Division," the state Office of Administration, Division of Facilities Management, Design and Construction;

(L) "Evaluation team," a group of people selected by the director to evaluate the proposals of the design-builders. The team shall consist of at least two (2) representatives of the Division of Facilities Management, Design and Construction and two (2) representatives of the using agency. A fifth member shall be selected by the director and shall serve as chairman to facilitate the evaluation process and to vote only in case of a tie;

(M) "Job order contracting (JOC)," is a firm fixed priced competitively bid procurement process with an indefinite quantity for small to medium sized construction and repair projects with the allowable size established by statute;

(N) "Proposal," an offer to enter into a design-build contract;

(O) "Public construction project," the process of designing, constructing, reconstructing, altering or renovating a state owned building;

(P) "Request for proposals," the document by which the division solicits proposals for a design-build contract; and

(Q) "Stipend," an amount paid to the unsuccessful proposers to defray the cost of submission of phase II of the design-build proposal.

(6) *Design-Build.* The director shall select those projects for which the use of the design/bid/build, design-build procurement, job order contracting, project/construction management or construction manager at-risk process is appropriate. In making that determination, the director shall consider:

(A) The likelihood of whether either method of procurement will serve the public interest by providing substantial savings of time or money over the traditional design/bid/build delivery process;

(B) The time available to complete the project and meet the needs of the agency and any need to expedite the delivery process;

(C) The type of project and its suitability of either method;

(D) The size of the project;

(E) The level of agency knowledge and confidence about the project scope and definition;

(F) The availability of the using agency staff to manage the project; and

(G) The availability of the division staff to manage the project.

(7) *Best Value Performance Based Contracting.*

(A) The division may use the best value performance based contracting method for a project when it is determined necessary to have higher than minimum standard performance and quality within a highly defined schedule and budget. In using this method, the division shall follow the procedures prescribed by this chapter.

(B) Best value performance based contracts may be a multi-phased procurement process consisting of the evaluation of proposers based on:

1. Past performance information;

2. Experience;

3. References;

4. Current capacity—

A. Risk assessment plan;

B. Interviews of staff, subconsultants and subcontractors; and

C. Schedule; and

5. Bid proposal (except for consultant selections).

(C) Past performance experience, references may account for twenty to forty percent (20–40%) of the evaluation; current capacity may account for thirty to fifty percent (30–50%) of the evaluation and cost may account for twenty to forty percent (20–40%) of the evaluation, except when consultants are selected and cost is not a factor, in which case, past performance, experience, references, and current capacity will account for one hundred percent (100%) of the evaluation.

(D) A request for proposals shall be prepared for each best value performance based contract containing, at a minimum the following elements:

1. The procedures to be followed for submitted proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;

2. The procedures for obtaining the plans and specifications for the project;

3. A schedule for the planned commencement and completion of the contract;

4. Budget limits of the contract; and

5. Affirmative action and minority or women's business enterprise requirements for the contract.

(E) Notice of requests for proposals shall be advertised in accordance with state statute.

(F) The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with the instructions of the request for proposals.

(G) Sealed cost proposals shall be submitted in accordance with the instructions of the request for proposal and publicly opened as set forth in the request for proposal, except for consultant selections.

(H) The division may require offerors to submit additional information related to contract planning and performance after the intent to award notification but prior to award of the contract.

(I) The division may reject an offeror's proposal and rescind the intent to award if the additional information is inadequate or not provided within the time established in the request for proposal.

(J) The division may move to the next highest scoring proposer or reject all proposals and solicit new proposals following the procedures for this method of procurement.]

[(8)](4) Project/Construction Management.

(A) Project/construction management services may be procured [A]as provided in sections 8.675 to 8.687, RSMo [Supp. 2007].

[(9) Construction Manager-at-Risk.

(A) The division may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the division shall follow the procedures prescribed by this section.

(B) Before or concurrently with selecting a construction manager-at-risk, the division shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with all state laws, as applicable. If the engineer or architect is not a full-time employee of the division, the division shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by sections 8.285 to 8.291, RSMo. The division's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk. This subsection does not prohibit a division engineer or architect from providing customary construction phase services under

the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(C) The division may provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the division.

(D) The division shall select the construction manager-at-risk in either a one (1)-step or two (2)-step process. The division shall prepare a request for proposals, in the case of a one (1)-step process, or a request for qualifications, in the case of a two (2)-step process, that includes general information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one (1)-step or two (2)-step process; and other information that may assist the division in its selection of a construction manager-at-risk. The division shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one (1)-step process is used, the division may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two (2)-step process is used, the division may not request fees or prices in step one. In step two, the division may request that five (5) or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions. By either method, past performance, experience, references and capacity shall account for a minimum of sixty percent (60%) of the evaluation. Cost shall account for a maximum of forty percent (40%) of the evaluation.

(E) The division shall publish the request for qualifications in a manner prescribed by the division.

(F) At each step, the division shall receive, publicly open, and read aloud the names of the offerors. Within forty-five (45) days after the date of opening the proposals, the division or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(G) The division or its representative shall select the offeror that submits the proposal that offers the best value for the division or using agency based on the published selection criteria and on its ranking evaluation. The division or its representative shall first attempt to negotiate a contract with the selected offeror. If the division or its representative is unable to negotiate a satisfactory contract with the selected offeror, the division or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(H) A construction manager-at-risk shall publicly advertise, in the manner prescribed by Chapter 8, RSMo 2000, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the division determines that the construction manager-at-risk's bid or proposal provides the best value for the division or using agency.

(I) The construction manager-at-risk and the division or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or division. All bids or proposals shall be made public after the award of the contract or within seven (7) days after the date of final selection of bids and proposals, whichever is later.

(J) If the construction manager-at-risk reviews, evaluates, and recommends to the division a bid or proposal from a trade contractor or subcontractor but the division requires another bid or proposal to be accepted, the division may compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the Division of Facilities Management, Design and Construction's requirement that another bid or proposal be accepted.

(K) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(L) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the division must each be in an amount equal to the project budget, as set forth in the request for qualifications. The construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the division to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.]

[[10]](5) Design-Build.

(A) Criteria. The director will select those projects for which the use of design-build procurement is appropriate. In making that determination, the director should consider—

1. The likelihood of whether either method of procurement will serve the public interest by providing substantial savings of time or money over the traditional design/bid/build delivery process;
2. The time available to complete the project and meet the needs of the agency and any need to expedite the delivery process;
3. The type of project and its suitability of either method;
4. The size of the project;
5. The level of agency knowledge and confidence about the project scope and definition;
6. The availability of the using agency staff to manage the project; and

[[A]]7. The availability of the division staff to manage the project. If a design-build process is selected, the director [shall] will determine the scope and level of detail [required] necessary to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the project.

(B) Procedure. A design criteria consultant may be employed or retained by the division director to assist in preparation of the request for proposal, perform periodic site visits, prepare progress reports, review, and approve progress and final pay applications of the design-builder, review shop drawings and submittals, decide disputes, interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections, and to provide

any other professional service where the director deems it to be in the public interest to have an independent design professional assisting with the project administration. The consultant *[shall]* will be selected and its contract negotiated in compliance with sections 8.285 to 8.291, RSMo *[Supp. 2007]*.

*[(C)]1.* Notice of requests for proposals shall be advertised in accordance with section 8.250, RSMo *[Supp. 2007]*. The division shall publish a notice of a request for proposal with a description of the project, the rationale for the decision to use the design-build method of procurement, the procedures for submittal, and the selection criteria to be used.

*[(D)]2.* The director shall establish in the request for proposal a time, place, and other specific instructions for the receipt of proposal. Proposals not submitted in strict accordance with those instructions shall be subject to rejection.

*[(E)]3.* A request for proposals shall be prepared for each design-build contract containing at minimum the following elements:

*1. JA.* The procedures to be followed for submitting proposals, the criteria for evaluation of proposals, and their relative weight and the procedures for making awards;

*2. JB.* The proposed terms and conditions for the design-build contract;

*3. JC.* The design criteria package;

*4. JD.* A description of the drawings, specifications, or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or other information that will be acceptable;

*5. JE.* A schedule for planned commencement and completion of the design-build contract;

*6. JF.* Budget limits for the design-build contract, if any;

*7. JG.* Affirmative action and minority or women business enterprise requirements for the design-build contract, if any;

*8. JH.* Requirements including any available ratings for performance bonds, payment bonds, and insurance; and

*9. JI.* Any other information that the division in its discretion chooses to supply, including, without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs, or references to public records, or affirmative action and minority business enterprise requirements consistent with state and federal law.

*[(F)]4.* The director *[shall]* will solicit proposals in a three (3)-stage process. Phase I *[shall]* will be the solicitation of qualifications of the design-build team. Phase II *[shall]* will be the solicitation of a technical proposal including conceptual design for the project, and *[p]Phase III [shall]* will be the proposal of the construction cost.

*[(G)]5.* The evaluation team shall consist of at least two (2) representatives of the division, two (2) representatives of the using agency, and a fifth member selected by the director who shall serve as chairman to facilitate the evaluation process and vote only in case of a tie. The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with this *[document]* regulation and *as set out in the instructions of* the request for proposal.

*[(H)]6.* In Phase I *[shall require]* all proposers *[to]* shall submit a statement of qualification *[which shall]* that includes, but is not *[be]* limited to:*]*—

*1. JA.* Demonstrated ability to perform projects comparable in design, scope, and complexity;

*2. JB.* References of owners for whom design-build projects have been performed;

*3. JC.* Qualifications of personnel who will manage the design and construction aspects of the project; and

*4. JD.* The names and qualifications of the primary design consultants and the contractors with whom the design-builder proposes to subcontract. The design-builder may *[not]* only replace an identified subcontractor or subconsultant with*[out]* the written approval of the director.

*[(J)]* The evaluation team shall evaluate the qualifications of

*all proposers in accordance with the instructions of the request for proposal.]*

7. Architectural and engineering services on the project shall be evaluated in accordance with the requirements of sections 8.285 *[and]* to 8.291, RSMo. Qualified proposers selected by the evaluation team may proceed to *[p]Phase II* of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and *[shall]* not allowed to proceed to *[p]Phase II* of the process. Under no circumstances shall price or fee be a part of the prequalification criteria. Points assigned in the *[p]Phase I* evaluation process *[shall]* will not carry forward to *[p]Phase II* of the process. All qualified proposers shall be ranked on points given in *[p]Phases II* and *III* only.

*[(K)]8.* The director *[shall have]* has discretion to disqualify any proposer, which in the director's opinion, lacks the minimal qualifications *[required]* necessary to perform the work.

*[(L)]9.* Once a sufficient number of qualified proposers have been selected, the proposers *[shall have]* will be given a specified amount of time with which to assemble *[p]Phase II* and *[p]Phase III* proposals.

*[(M)]10.* Phase II of the process shall be conducted as follows:

*1. JA.* The director *[shall]* will invite the top qualified proposers to participate in *[p]Phase II* of the process;

*2. Proposers must submit their design for the project to the level of detail required in the request for proposal.]*

**B.** The design proposal should demonstrate compliance with the requirements set out in the request for proposal, including the level of detail requested for the design;

*3. JC.* The ability of the proposer to meet the schedule for completing a project as specified by the owner may be considered as an element of evaluation in *[p]Phase II*;

*4. JD.* Up to twenty percent (20%) of the points awarded to each proposer in *[p]Phase II* may be based on each proposer's qualifications and ability to design, contract, and deliver the project on time and within budget of the Office of Administration;

*5. JE.* Under no circumstances should the design proposal contain any reference to the cost of the proposal; and

*6. JF.* The design submittals will be evaluated and assigned points in accordance with the requirements of the request for proposal. Phase II shall account for no less than forty percent (40%) of the total point score as specified in the request for proposal.

*[(N)]11.* Phase III shall be conducted as follows:

*1. JA.* The *[p]Phase III* proposal must provide a firm, fixed cost of construction. *The proposal must]* and be accompanied by bid security and any other *[required]* submittals mandated by the request for proposals, such as statements of minority participation *[as required by the request for proposal];*

*2. JB.* Cost proposals must be submitted in accordance with the *[instructions of the]* request for proposal. The director shall reject any proposal that is not submitted on time. Phase III shall account for not less than forty percent (40%) of the total point score as specified in the request for proposal;

*3. JC.* Proposals for *[p]Phase II* and *[p]Phase III* shall be submitted concurrently at the time and place specified in the request for proposal. The *[p]Phase III* cost proposals shall be opened only after the *[p]Phase II* design proposals have been evaluated and assigned points;

*4. JD.* Cost proposals will be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team will make public its scoring of *[p]Phase II*. Cost proposals will be evaluated in accordance with the requirements of the request for proposal. In evaluating the cost proposals, the low bidder shall be awarded the total number of points assigned to be awarded in *[p]Phase III*. For all other bidders, cost points will be calculated by reducing the maximum points available in *[p]Phase III* by two percent (2%) or more for each percentage point of the low bid by which the bidder exceeds the low bid and the points assigned will be added to the points assigned for *[p]Phase II*

for each proposer;

*[5.]E.* If the director determines that it is not in the best interest of the state to proceed with the project pursuant to the proposal offered by the proposer with the highest total number of points, the director *[shall]* may reject all proposals. In such event, all qualified proposers with lower point totals shall receive a stipend and the proposer with the highest total number of points shall receive an amount equal to two (2) times such stipend. If the director determines to award the project, the responsive proposer with the highest number of points shall be awarded the contract; and

*[6.]F.* If all proposals are rejected, the director may solicit new proposals using different design criteria, budget constraints, or qualifications.

*[(O)]12.* As an inducement to qualified proposers, the division may pay a reasonable stipend, the amount of which shall be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted. Upon payment of the stipend to any unsuccessful design-build proposer, the state shall acquire a nonexclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by the state in any manner. If the design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

*[(11)] Job Order Contracting.*

*(A) The division may award JOC for the maintenance, construction, repair, rehabilitation, renovation or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks.*

*(B) The division may establish contractual unit prices for a JOC by:*

- 1. Specifying one (1) or more published construction unit price books and the applicable divisions or line items; or*
- 2. Providing a list of work items and requiring the offerors to bid or propose one (1) or more coefficients or multipliers to be applied to the price book or work items as the price proposal.]*

**(6) Standing Contracts.**

**(A) The minimum and maximum amounts of work to be performed under a standing contract shall be stated in the bid documents issued by the division. Once work reaches the maximum amount, no further work may be performed under the contract.**

**(B) The amount of each order for a job or project issued under a standing contract shall not exceed the amounts set forth in section 8.255, RSMo.**

**(C) The division shall advertise for, receive, and publicly open sealed proposals for *[JOC]* standing contracts in accordance with the competitive bidding standards established by Chapter 8, RSMo and these regulations.**

**(D) The division may require *[offerors]* bidders on standing contracts to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.**

**(E) The division may award *[JOC]* standing contracts to one (1) or more contractors in connection with each solicitation of bids or proposals.**

**(F) An order for a job or project under *[the JOC]* a standing contract must be signed by the division's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities, or may be a unit price order based on the quantities and line items delivered.**

**(G) The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order as set forth in bid documents issued by the**

**division.**

**(H) The base term of a *[JOC is]* standing contract is for the initial period and *[with]* any renewal options that the division sets forth in the bid documents. The base term may not exceed two (2) years and is not renewable without further advertisement and solicitation of proposals.**

**(I) If a *[JOC]* standing contract or an order issued under the contract requires *[engineering or architectural]* services that constitute the practice of engineering or the practice of architecture, those services shall be provided in accordance with applicable law.**

**(7) Contractor Responsibility. The director has the authority to declare a contractor not responsible, and to either suspend or debar the contractor from performing work on any state project.**

**(A) Initial Decision.**

**1. Notice of the director's decision to suspend or debar a contractor shall be sent to the contractor by certified mail, return receipt requested. The notice should contain a statement as to the factual basis for the contractor's suspension or debarment, the length of the suspension, and an explanation of what the contractor must do to be found eligible to again submit bids on contracts.**

**2. Upon receipt of notice of suspension or debarment, the contractor may request a hearing in front of the director or his/her appointed designee. The hearing will be informally conducted and provide the contractor or affiliates an opportunity to present any facts that may tend to show that the contractor is in fact responsible.**

**3. Any request for a hearing must be postmarked within ten (10) consecutive calendar days of the date of receipt of the notice, as evidenced by the return receipt.**

**4. The director shall render a determination within sixty (60) consecutive calendar days of the hearing. The determination shall be sent to all parties by certified mail, return receipt requested. The determination shall set forth the basis for the suspension or debarment, the length of ineligibility, and the showing required for the contractor to once again be determined eligible to bid on contracts. The determination may affirm, reverse, or modify the preliminary determination.**

**(B) Appeal. The contractor may request that the director's determination be reviewed by the commissioner of administration or his/her appointed designee.**

**1. Any request for review must be in writing and be filed with the commissioner within fourteen (14) consecutive calendar days of the date of receipt of the director's final determination, as evidenced by the return receipt. The request must set forth specific reasons why relief should be granted.**

**2. A review under this section will be based solely on the documentation submitted by both the contractor and the director. No new hearing will be provided. The commissioner may set aside a determination only if it is found to be an abuse of discretion.**

**3. The commissioner's determination shall be issued within sixty (60) consecutive calendar days of the date of the request for review and shall be mailed to all parties.**

**4. The decision of the director or the commissioner to suspend or debar a contractor is not a "contested case" as defined in Chapter 536, RSMo.**

**(C) Effect of Suspension or Debarment. During the period of suspension or debarment, a suspended or debarred contractor will not be eligible to receive invitations for bids or requests for proposals or to be awarded any contract by the division. A suspended or debarred contractor may also not participate in any contract with the division. This restriction includes being a subcontractor, consultant, sub-consultant or supplier to any eligible contractor, as well as submitting a bid as part of a partnership or joint venture.**

**1. If a contractor enters into any contract to perform work**

on a state project during a period of suspension or debarment, the director may issue a determination extending the time of suspension, changing a suspension to a debarment, or changing the showing that the contractor must make to be determined eligible to perform work on future contracts.

2. Any eligible contractor who knowingly contracts with a suspended or debarred contractor to provide labor or materials on a contract with the division may be suspended or debarred.

3. A suspension or debarment may extend to any affiliate of the contractor who had actual or constructive knowledge of the preliminary determination of suspension or debarment.

4. The director may suspend a contractor for a period not to exceed one year or debar a contractor indefinitely. After the stated period of suspension has expired or more than two (2) years has passed since the finding of debarment, the contractor may apply to the director to be declared eligible. The contractor must show that the contractor has complied with the terms set forth in the final determination of suspension or debarment. If the contractor applies for reinstatement but is unable to demonstrate responsibility to the director, the contractor shall continue to be ineligible until the required information is provided.

(D) Cause for Suspension or Debarment. The director may suspend or debar a company or firm and their named principals for any or a combination of the following reasons:

1. Commission of a criminal offense related to obtaining or performing a government contract;

2. Violation of antitrust statutes;

3. Commission of fraud, embezzlement, theft, forgery, making false statements, or tax evasion;

4. Commission of any other offense or action indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor;

5. Debarment of the contractor by another state, the federal government, another entity of the state of Missouri, or by a political subdivision of the state of Missouri; or

6. Violations of material contract provisions, which include, but are not limited to failure to, perform or negligent performance of any term or standard of one or more contracts. The failure to perform caused by acts beyond the control of the contractor, or a subcontractor, or material supplier, shall not be considered a basis for suspension or debarment.

*AUTHORITY:* sections 8.250, 8.255, 8.310, and 8.320, RSMo [Supp. 2007] 2016. Original rule filed Nov. 5, 2007, effective June 30, 2008. Amended: Filed Nov. 30, 2018.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 1—OFFICE OF ADMINISTRATION  
Division 30—Division of Facilities Management,  
Design and Construction  
Chapter 3—Capital Improvement and Maintenance  
Program**

**PROPOSED RESCISSION**

**1 CSR 30-3.060 Determination of Contractor Responsibility.** This rule established the procedure for determining contractor responsibility and eligibility for state contracts.

*PURPOSE:* This rule is being rescinded and the content is being moved to 1 CSR 30-3.025 where bidding processes and procedures are discussed.

*AUTHORITY:* section 8.320, RSMo 2000. Original rule filed July 14, 1989, effective Oct. 16, 1989. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Rescinded: Filed Nov. 30, 2018.

*PUBLIC COST:* This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rescission with the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 1—OFFICE OF ADMINISTRATION  
Division 30—Division of Facilities Management,  
Design and Construction  
Chapter 4—Facility Maintenance and Operation**

**PROPOSED AMENDMENT**

**1 CSR 30-4.020 Facility Management.** The Division of Facilities Management, Design and Construction is deleting sections (1), (2), and (4), amending existing sections (2) and (5), renumbering and adding new sections (3)–(5) to this regulation.

*PURPOSE:* This amendment deletes requirements relating to space management and energy conservation program development, amends information related to facility records, and incorporates information formerly found in other regulations in this chapter that are concurrently being rescinded. The information incorporated from other regulations in this chapter has been revised and reorganized to better reflect FMDC's current practices and to increase the readability of the regulation. Information regarding coordination with the State Emergency Management Agency and the use of video surveillance, metal detectors, and security guards has also been added.

*PURPOSE:* This rule establishes standards and procedures for management of buildings or facilities under the operational direction of the Division of Facilities Management, Design and Construction.

*[(1) General. The purpose of these rules is to provide direction and guidance for facilities operators within state government for asset management of state facilities, including space management and utilization, maintenance, energy conservation, safety and security, and facility records. The rules also include guidance on the operational diagnostics and performance tracking.*

*(2) Space Management. Each department shall have enough assigned space to perform their mission. The director shall develop a space management plan in conjunction with the department's space master plan. The plan shall include space standards for employees based on job function. The director shall be responsible for making recommendation to*