

working day. Comments and/or recommendations of the department/agency also shall be forwarded to the Division of Facilities Management, Design and Construction).

4. Construction [d]Documents. This final submission shall consist of drawings and specifications and construction cost estimate. The documents are to be complete, sealed by appropriate engineering and/or architectural disciplines, and ready for issuance for bidding. Upon receipt, the [construction/]project manager [shall] will finalize [the Divisions 0 and 1 specification sections of] the bidding documents. [Chief Engineer/Architect] The director's designee performs an administrative review of the documents and, if acceptable, signs the documents as appropriate.

[(D)](4) Codes and Standards. The following are adopted as the codes and standards for work [under the Capital Improvement and Maintenance Program] on state facilities, with the exception of facilities operated and maintained by agencies exempted from the requirements of this regulation as set forth below. The chief engineer/architect of the division is the authority for code determinations.

[1.](A) International Building Codes (IBC-current edition);

[2.](B) The Americans with Disabilities Act (ADAAG-current edition);

[3.](C) National Fire Code (NEC) NFPA 70 - National Electrical Code and NFPA 101-Life Safety Code-current editions);

[4.](D) International Mechanical Code (IMC-current edition);

[5.](E) International Plumbing Code (IPC-current edition);

[6. National Fire Protection Association (NFPA 101-current edition);]

[7.](F) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE Standards 90.1 for Energy Efficient Design of New Buildings except Low-Rise Residential Buildings-current edition);

[8.](G) American Society of Mechanical Engineers (ASME-current edition);

[9.](H) American National Standards Institute (ANSI-current edition);

[10.](I) American Concrete Institute (ACI-current edition);

[11.](J) Sheet Metal and Air Conditioning Contractor's National Association (SMACNA-current edition);

[12.](K) Boiler and Pressure Vessel Act of the State of Missouri-current edition).

[(E) If there are significant differences between the local codes and current international codes, the designer shall discuss with the local authority to resolve the issues. If a resolution cannot be reached, the division chief engineer/architect shall be contacted for final ruling.]

[(F)](L) Local Codes. Current codes adopted by a Missouri city and/or county in which a project site is located. These codes are applicable only to the extent that they are not in conflict with [code determinations by the chief engineer/architect] the codes listed above or are otherwise required by statute. The State of Missouri and its contractors are exempt from paying license, inspection, or similar fees for work on state premises.

(5) Bidding.

(A) Prospective Bidders. Consultants retained for design work [under the program shall] should assist the director in establishing a list of prospective bidders for projects they design. If necessary, consultants [shall] will contact prospective bidders to determine and/or solicit interest in bidding for the work. The department/agency [shall] will provide, within its capability, similar assistance.

(B) Bid Review and Recommendations. The project/[construction] manager [shall] will notify the designer and the [agency capital improvement coordinator/service level manager of the] department/agency [concerned] of scheduled project bid dates. Immediately following the opening of bids for a project, the project manager may coordinate a review of the bids with the department/agency [capital

improvement coordinator/service level manager] and, when appropriate, with the designer. If the bids for the project are within available funding and there is agreement on the low responsive bidder, the department/agency [shall] will forward its written recommendation for award to the director along with the encumbrance for the amount of the recommended award [within five (5) working days]. If project bids are not within available funding or agreement on the low responsive bidder is not reached, the department/agency, [within five (5) working days, shall] will forward to the director its written recommendation for subsequent action on the project. When requested by the director, the designer also [shall] will forward, [within five (5) working days,] a recommendation on the bids received and/or subsequent action on the project.

(7) Exemptions. There are specific exemptions from requirements of this rule provided by the Missouri Constitution and by the Revised Statutes of Missouri.

(B) Institutions of higher learning, community junior colleges, and the Department of Conservation are exempted by section 8.310, RSMo [Supp. 2007] from provisions of this rule which require coordination with or approval by the commissioner of administration and/or the director of the Division of Facilities Management, Design and Construction for defining projects, determining fund allocation, negotiation or approval of contracts, and approval of payments.

[(8) This rule becomes effective with the appropriation for the applicable fiscal year.]

AUTHORITY: sections 8.310 and 8.320, RSMo [2000] 2016. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Amended: Filed Oct. 11, 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 AMENDMENT

1 CSR 30-3.040 Project Contracts and Work Completion. The Division of Facilities Management, Design and Construction is deleting sections (1) and (2) and amending what were previously sections (3) and (4) of this rule. The purpose statement is also being amended.

PURPOSE: This amendment deletes provisions that were moved to another regulation or are unnecessarily restrictive. This amendment also revises the rule to better reflect FMDC's current practices and

to increase the readability of the regulation.

PURPOSE: This rule establishes the procedures for accomplishing the work on [Capital Improvements and Maintenance P]projects under the supervision of the director of the Division of Facilities Management, Design and Construction.

[(1) Bidding.

(A) **Soliciting Bids.** Section 8.250, RSMo requires that public bids be solicited for work under this program. It is the policy of Missouri to solicit proposals from all parties with interest in work under this program. 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 shall be authorized only after review and approval of drawings and specifications have been completed in accordance with 1 CSR 30-3.030. If installed function equipment is separately procured, specifications for the equipment will be coordinated with the Division of Facilities Management, Design and Construction prior to initiating any purchasing procedures. This coordination is essential to assure that the facility can accommodate the equipment.

1. Contracts costing more than twenty-five thousand dollars (\$25,000). Contracts costing more than twenty-five thousand dollars (\$25,000) will have solicitation advertised in accordance with section 8.250, RSMo Supp. 2007. In addition, when appropriate, individual firms shall be contacted to determine their interest 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 through the use of standing maintenance contracts in accordance with 1 CSR 30-4.030(3) or they may be individually procured by the agency in accordance with these instructions and, when appropriate, the current policies of the Division of Purchasing. They may be funded from operations appropriations or non-appropriated funds following these procedures.

3. **Emergency repairs.** For emergency repair projects, firms that are available and competent to perform required 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. 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 shall be incorporated into a separate project for later solicitation. Projects for emergency repairs the cost of which exceeds twenty-five thousand dollars (\$25,000) require approval of the director. Requests shall include scope, source of funding and, when appropriate, drawings, specifications and proposal forms.

(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, or both, 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, shall 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 of Facilities Management, Design and Construction. 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 bidding 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.

(2) **Contracts.** Approval by the director of a contract(s) for a project in the program for 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. The bid tabulation and the contract shall be submitted together for review and approval.

(A) **Award of contracts** shall be made to the bidder successfully meeting the requirements of the bidding documents within the available appropriations.

(B) **Intent to Award.** An intent to award letter shall be issued to the successful bidder upon approval by the director. The purpose of the intent to award is to notify the successful bidder of their selection so they may obtain the necessary insurance and performance bond to allow the notice to proceed to be issued. The contract period begins with the issuance of the intent to award letter.

(C) **Contract Documents.** Contract documents normally shall 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 shall 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. Acceptance of insurers by the director is required for all bonds and insurance tendered. Failure to perform on a prior contract may be cause for rejection of an insurer. Failure to furnish the required contract documents in a reasonable time may be treated by the director as refusal to accept the contract and/or execute the contract.

(D) **Notice to Proceed.** Notice to proceed with work on a project under this program shall 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. The date established by the intent to award letter establishes the start of the time for completion stated in the contract.]

[(3)](1) **Project Supervision.** The director[, as representative for

the owner, shall be] is responsible for supervision of work on all projects [under this program] with the exception of projects for agencies that are exempt from this rule as set forth below.

(A) Department/Agency/Site. The department/agency and personnel at the project site are responsible for providing the contractor with reasonable access to the project site, available utility connections, and authorized storage areas. These [shall] will be arranged [so as] to minimize interference between necessary operations at the facility and the project work. Department/agency/site personnel shall:

1. Cooperate [in exchange of] by exchanging information and [informal coordination] coordinating with the contractor, but shall not assist the contractor with, or issue instructions on, project work; [and]

2. Cooperate with and assist, to the extent possible, the [inspector of the work] director's on-site representative and the designer in observing the work, equipment, and materials on the site.; and

3. Report [Unusual occurrences or apparent problems [will be reported to the inspector] to the director's on-site representative at the earliest opportunity.

(B) Division of Facilities Management, Design and Construction. For each project [in the program], the director shall designate an on-site representative. The director's on-site representative may be a division employee, a consultant, or a department/agency employee, as the director deems appropriate for that project. The director's on-site representative [shall have responsibility] is responsible for supervision and administration of the [contract(s) on the] project(s). This representative shall], including the following:

1. [Issue] Issuing, in coordination with the designer, official instructions to the contractor[.];

2. [provide] Providing coordination as necessary with site personnel and verifying work or materials included in payment estimates;

[2.]3. Assisting with coordinating and scheduling the work and [provide] providing coordination between contractors working at the project site;

[3.]4. [Be responsible] Performing or arranging for testing when indicated by conditions or special requirements[, as well as for periodic reports or recommendations to the director];

5. Providing periodic reports and/or recommendations to the director;

[4.]6. Notifying the department/agency [program manager/service level manager] of scheduled visits, meetings, and inspections; and

[5.]7. Maintaining records of payments, proposals, request for information, contract changes, etc. having to do with the progress of the work.

(C) Designer. The designer[, when construction administration is included in their responsibility,] shall provide construction administration as set forth in the terms of the designer's contract or, if the designer is a state employee, as follows:

1. Provide on-site observation to assure that the work is performed in accordance with the contract documents;

2. Issue, in coordination with the [inspector] director's on-site representative, official instructions to the contractor and verify work or materials included in payment estimates;

3. Assist the contractor in establishing the sequence and control for the several phases and trades involved in the project work;

4. Provide expeditious review and response for all submissions from the contractor and/or along with clarifications or interpretations of the intent of the contract documents;

5. Provide reports for all meetings called to review the work or progress or to resolve problems. Reports for periodic progress meetings [shall] should include a [resume] review of work to date, progress for the period, scheduled versus actual progress, and efforts to resolve differences between the schedule and actual progress;

6. Provide recommendations for resolving problems of unusual

occurrences or unanticipated requirements; and

7. Provide a complete set of reproducible, as-built drawings for the project.

(D) Contractor. The contractor shall be responsible for providing[.] all services set forth in the contractor's contract.

[1. A superintendent on the project site at all times when work is in progress. This superintendent shall have the capability and authority to supervise the work and to make decisions relating to the work. Inspection and/or observation by others shall not be used as a substitute for the contractor's superintendent;

2. Assurance that the quality and quantity of workmanship, materials and equipment on-site and/or incorporated in the project will meet the requirements of the contract documents;

3. Coordination of all activities, personnel and equipment involved in the work under the contract along with coordination, as appropriate, with other contractors or personnel on the site. Access to the work site and/or storage areas will be controlled carefully to minimize interference with other personnel or activities at the site;

4. Payment for any substantial costs of connections for, as well as metering and use of, utilities available at the site;

5. Complete sets of records, to include drawings legibly marked to show any changes to, or deviation from, the original contract drawings, all approved shop drawings and operating instructions for all equipment installed under the contract; and

6. A safe work environment in compliance with Occupational Safety and Hazard Administration (OSHA) regulations must be maintained at all times.]

(E) Preconstruction Conference. The [inspector of the work] director's on-site representative shall call together the contractor, the designer, a [site] department/agency representative, and other interested parties for a conference at the site prior to the start of work on the project. The administrative procedures [as well as], coordination of access, security, storage, utility connections, areas of responsibilities, and the authority for interpretations and/or issuance of instructions will be reviewed to assure understanding by all parties. [Instructions will be provided by the inspector] The director's on-site representative will provide instructions for any requirements or conditions requiring special attention.

(F) Construction Progress Meetings. The [inspector] director's on-site representative shall periodically call together the designer and the contractor to review progress of the work in addition to the review and verification of payment requests. Schedule versus actual progress will be examined. When actual progress has fallen behind scheduled progress, adjustments in work force, materials, equipment, or other factors, as appropriate, [shall] should be established at the progress meeting to assure completion within the time allowed.

(G) Contract Changes. Changes in the work shall be approved only when the director determines that it would be detrimental to bid the work separately. If possible, pricing for contract changes will be determined from unit prices stated in, or derived from, the contractor's original bid proposal. Contract changes shall not be used to expand the scope of work beyond the intent of the appropriation. Contract changes [shall] will be submitted in such form as may be established by the director, and the proposed work shall not proceed until approved by the director or his/her designee. The designer [shall] will coordinate proposed changes with the [inspector] director's on-site representative and the department/agency and then prepare the contract change, including appropriate drawings and specifications. After review and approval of the contractor's proposal, the designer shall furnish the contract change and proposal to the [inspector for recommendation and forwarding to the] director's on-site representative. Submission and approval of an encumbrance in the amount of the contract change [shall] should proceed concurrently with approval and signature for the contract change. Notice to proceed with work under a contract change [shall] will be

issued only after confirmation of available funding.

[(H) Inspections. The contractor is responsible for completion of all work in accordance with the contract documents. Periodic visits and observations by the inspector and designer are for assistance and shall not be used as a substitute for the contractor's required responsibilities under the terms of the contract.]

1. Pre-final inspection. When the contractor **notifies the director's on-site representative that the contractor** has substantially completed the work[, *s/he shall notify the inspector requesting a pre-final inspection and provide a complete list of all items remaining to be completed.*], *[T]he [inspector] on-site representative*, with the designer and contractor, shall review this list, examine the work, and note any exceptions or additional items to be corrected or completed. After review of the items to be corrected and completed and considering the time necessary to accomplish these, a time and date will be set for final inspection.

2. Final inspection. Final inspection *[shall be]* is an examination of the completed project, with particular emphasis on the items for correction and completion established in the pre-final inspection. Representatives of the department/agency[, *and when appropriate, the grantor or donor of support funding shall*] will be invited to participate in the final inspection along with the *[inspector] director's on-site representative*, the designer, and contractor. Any items remaining for correction and completion shall be noted and the contractor *[shall be]* given a specific time to accomplish these items. Items of testing and adjustment *[which] that* are incomplete due to seasonal requirements will be scheduled for completion in the appropriate season. Final acceptance may be made after completion of all items except for testing or adjusting seasonal equipment.

3. Warranty period. **All equipment, materials, and work should be guaranteed or warranted for at least one (1) year after final acceptance, unless otherwise approved by the director.** During the warranty period the facility operator shall inform the contractor of all deficiencies encountered needing correction. If not corrected within a reasonable period of time, the *[inspector] director's on-site representative* shall be notified.

4. Warranty inspection. *[All items of equipment, materials and work are guaranteed or warranted for at least one (1) year after final acceptance.]* During the tenth or eleventh month following completion, the designer shall schedule a meeting at the project site with the contractor, a representative of the department/agency/site, and a representative of the director. Performance of items under guaranty or warranty will be examined to assure that *[they are] the contractor is* providing satisfactory service. Deficiencies shall be noted and the contractor *[s shall be]* given a specific time for correction. Payment/performance bonds shall not be released until after the warranty inspection and correction of noted deficiencies. This warranty inspection shall not be construed to limit or relieve any **contractual** responsibility of the contractor to provide call-back or other service or correction of deficiencies during the warranty period for the equipment, materials, or work on the project.

[(4)](2) Exemptions. There are specific exemptions from requirements of this rule provided by the *Missouri Constitution* or by the *Revised Statutes of Missouri*.

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempted from provisions of this rule by Article IV, Section 29, *Missouri Constitution* of 1945.

(B) Institutions of higher learning, community junior colleges, and the Department of Conservation are exempted by section 8.310, RSMo from provisions of this rule which require coordination with or approval by the commissioner of administration, Division of Facilities Management, Design and Construction, or both, for soliciting and receipt of proposals, award of and payments for contracts and contract supervision.

[(C) The director of the Division of Facilities Management,

Design and Construction 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.]

AUTHORITY: sections 8.310 and 8.320, RSMo [2000] 2016 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1981, effective Feb. 15, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 11, 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 AMENDMENT

1 CSR 30-3.050 Project Payments, Acceptance and Occupancy. The Division of Facilities Management, Design and Construction is amending sections (1) and (2) and deleting section (4) of this rule.

PURPOSE: This amendment deletes provisions that are unnecessarily restrictive. This amendment also revises the rule to better reflect FMDC's current practices and to increase the readability of the regulation.

PURPOSE: This rule establishes the procedures for payments[,] and acceptance and occupancy of projects.

(1) Payments. Payments *[shall]* **to the contractor will** be made after review and verification of work and materials in place and/or on-site. Review and verification *[shall]* **will generally** be accomplished as part of *[the] a* periodic construction progress meeting. **When possible**, *[A] apparent* differences between the requests for payment and work or material *[shall]* **will** be resolved *[in order]* so that the request for payment may be signed by the *[construction manager] director's on-site representative*, the contractor and the designer prior to conclusion of the progress meeting. *[The contractor's request for payment shall be transmitted expeditiously to the Division of Facilities Management, Design and Construction. Administrative processing and approval in the Office of Administration shall be completed within fifteen (15) working days after receipt by the director of the payment request.]* When *[required]* necessary, the payment request *[shall]*