



Rules of
Office of Administration
Division 30—Division of Facilities Management,
Design and Construction
Chapter 3—Capital Improvement and Maintenance
Program

Title	Page
1 CSR 30-3.010 Rule Objectives and Definitions (Rescinded April 30, 2019)	3
1 CSR 30-3.020 Project Definition and Fund Allocation (Rescinded April 30, 2019)	3
1 CSR 30-3.025 Methods of Management/Construction Procurement	3
1 CSR 30-3.030 Project Design.....	7
1 CSR 30-3.035 Project Selection/Bidding Methods (Rescinded April 30, 2019)	10
1 CSR 30-3.040 Project Contracts and Work Completion	10
1 CSR 30-3.050 Project Payments, Acceptance and Occupancy	12
1 CSR 30-3.060 Determination of Contractor Responsibility	13



Title 1—OFFICE OF ADMINISTRATION

Division 30—Division of Facilities Management, Design and Construction Chapter 3—Capital Improvement and Maintenance Program

1 CSR 30-3.010 Rule Objectives and Definitions

(Rescinded April 30, 2019)

AUTHORITY: sections 8.310 and 8.320, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Rescinded: Filed Aug. 31, 2018, effective April 30, 2019.

1 CSR 30-3.020 Project Definition and Fund Allocation

(Rescinded April 30, 2019)

AUTHORITY: sections 8.310 and 8.320, RSMo 2000. 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 Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Rescinded: Filed Aug. 31, 2018, effective April 30, 2019.

1 CSR 30-3.025 Methods of Manage- ment/Construction Procurement

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

(1) The Division of Facilities Management, Design and Construction may require pre-qualification of bidders when the construction project to be bid:

(A) Is highly specialized as to the work to be performed;

(B) Requires significant experience in the method of construction specified;

(C) Requires specialized equipment and experience with such equipment;

(D) Requires specific expertise in the installation of sophisticated equipment, systems or controls;

(E) Requires a minimum level of training or certification from specified equipment manufacturers;

(F) Must be completed within a critical time frame; or

(G) Requires higher than “industry standard” quality control.

(2) The director shall select those projects for which pre-qualification of bidders is appropriate.

(3) The pre-qualification process shall be a one-step process. The division shall prepare a request for qualifications for specific selected projects. 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 the selection criteria to be used, which may include:

(A) Experience of the bidder with similar projects;

(B) Experience of key personnel proposed for project;

(C) List of recent projects of similar scope and value;

(D) Bonding capacity;

(E) List of specified equipment available to bidder;

(F) References;

(G) Safety records;

(H) Previous project completion schedules;

(I) Previous project contract change rates; and

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

(4) An evaluation team 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) 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) 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) 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 subcontractors;

(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) 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) Project/Construction Management.

(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 sub-

contractors 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) Design-Build.

(A) If a design-build process is selected, the director shall determine the scope and level of detail required to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the project.

(B) 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 be selected and its contract negotiated in compliance with sections 8.285 to 8.291, RSMo Supp. 2007.

(C) 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) 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) A request for proposals shall be prepared for each design-build contract containing at minimum the following elements:

1. 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. The proposed terms and conditions for the design-build contract;

3. The design criteria package;

4. 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. A schedule for planned commencement and completion of the design-build contract;

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



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

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

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

(G) The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with this document and as set out in the instructions of the request for proposal.

(H) Phase I shall require all proposers to submit statement of qualification which shall include, but not be limited to:

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

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

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

4. 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 replace an identified subcontractor or subconsultant without 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. Architectural and engineering services on the project shall be evaluated in accordance with the requirements of sections 8.285 and 8.291, RSMo. Qualified proposers selected by the evaluation team may proceed to phase II of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to phase II of the process. Under no circumstances shall price or fee be a part of the prequalification criteria. Points assigned in the phase I evaluation process shall not carry forward to phase II of the process. All qualified proposers shall be ranked on points given in phases II and III

only.

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

(L) Once a sufficient number of qualified proposers have been selected, the proposers shall have a specified amount of time with which to assemble phase II and phase III proposals.

(M) Phase II of the process shall be conducted as follows:

1. The director shall invite the top qualified proposers to participate in 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. The design proposal should demonstrate compliance with the requirements set out in the request for proposal;

3. 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 phase II;

4. Up to twenty percent (20%) of the points awarded to each proposer in 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. Under no circumstances should the design proposal contain any reference to the cost of the proposal; and

6. 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) Phase III shall be conducted as follows:

1. The phase III proposal must provide a firm, fixed cost of construction. The proposal must be accompanied by bid security and any other required submittals, such as statements of minority participation as required by the request for proposal;

2. 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. Proposals for phase II and phase III shall be submitted concurrently at the time and place specified in the request for proposal. The phase III cost proposals shall be opened only after the phase II design proposals have been evaluated and assigned points;

4. 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 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 phase III. For all other bidders, cost points will be calculated by reducing the maximum points available in 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 phase II for each proposer;

5. 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 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. If all proposals are rejected, the director may solicit new proposals using different design criteria, budget constraints or qualifications.

(O) 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.

(C) The division shall advertise for, receive, and publicly open sealed proposals for JOC.

(D) The division may require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

(E) The division may award JOC 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 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.

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

(I) If a JOC 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.

AUTHORITY: section 8.250, RSMo Supp. 2007. Original rule filed Nov. 5, 2007, effective June 30, 2008.*

**Original authority: 8.250, RSMo 1939, amended 1957, 1995, 2007.*

1 CSR 30-3.030 Project Design

PURPOSE: This rule sets forth the procedure for design of Capital Improvement and Maintenance/Repair/Renovation projects.

(1) Selection of Designer. Selection of a consultant firm for design of projects in the Capital Improvement Maintenance Program will be made within seventy-five (75) calendar days after the appropriations are passed and signed. Department/agencies participate

in the selection of designers for projects included in their program. Quality based selections are made by the department/agency capital improvement coordinator/service level managers based upon the criteria in the Architect Contractor Engineer (ACE) database.

(A) Design by Department/Agency. The department/agency may recommend in-house design for those projects within their capability and capacity provided they have licensed engineers or architects to seal the prepared plans and specifications. The director will concur with this recommendation unless there appears to be a substantial question of capability or capacity. The director will be the determining authority for questions of department/agency capacity and/or capability for design of projects.

(B) Design by Division of Facilities Management, Design and Construction. The director shall examine projects remaining after selections for in-house department/agency design. Those projects which are cost prohibitive to be done by consultants or require minor design for which the Division of Facilities Management, Design and Construction has the capability and capacity may be selected for in-house design by that division.

(C) Design by Consultants. Private consultants will be selected by the director for design of the balance of the projects in the program established by the capital improvement and maintenance appropriations. It is the policy of the division to provide the greatest possible opportunity for qualified and competent consultants to participate in this program. The director shall maintain a file and ACE database of consultant firms who have expressed interest in the program. This file shall include notations of specific areas of interest, experience or expertise as expressed by each consultant firm and ratings of previous projects completed and evaluated by the division.

1. Service level managers/agency capital improvement coordinators may make recommendations for selections of consultants for design of projects not selected for in-house design. The selection of consultants will be based on knowledge of, or experience with, these consultants on current or prior projects and performance ratings or new and/or Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) firms that have a demonstrated competency and interest. Program managers may assist in the selections by making recommendations regarding the need for special expertise or continuity between current and previous or proposed future work.

2. The director, Division of Facilities Management, Design and Construction, will approve the selected consultants after full consideration of professional and technical competence, as well as experience, special expertise and capacity necessary for studies and/or design of proposed projects.

A. Consideration will be given to providing opportunities for as many competent consultants as possible. Consultants who have not been retained for recent state projects will be given priority consideration in selections for new projects.

B. In those projects or programs where continuity is a significant factor, consideration will be given to continued retention of a consultant already engaged for existing projects or programs.

(2) Consultant Firm Design.

(A) Responsibilities.

1. Division of Facilities Management, Design and Construction.

A. Contracts. The director will negotiate contracts for consultant studies and/or design. These contracts will be negotiated on the basis of a reasonable fee considering scope, difficulty, research, disciplines involved and proposals by the selected consultant. The director shall reserve the right to approve additional consultants retained by the selected consultant for work on the project or study.

B. Supervision and approval of design or study. The director shall be responsible for periodic review and approval of studies and/or designs for projects in the program. Reviews shall include examination of technical adequacy as well as economy of materials and construction methods proposed. In addition, reviews shall examine estimated costs to assure that projects remain within funding authorizations. Those reviews shall be coordinated with the department/agency concerned.

C. Approval of payments. The director shall be responsible for review and approval of consultants' requests for payment. Approval of payment to consultants will be based on review and approval of work completed to the date of the payment request.

D. Communications. All official communication and direction to the consultant shall be issued by the director. This will not limit informal communication or coordination between consultants and department/agencies. The service level managers can make a valuable contribution to understanding requirements and problems for the project. Informal communication and working conferences between the staff and the consultant are essential to successful completion of a



project. Knowledgeable personnel shall be made available for consultations and site visits by the consultant. The consultant, by prior arrangement, shall have access to the project site at reasonable times.

(3) Consultant. The consultant is responsible for establishing the concept and planning for the project, as well as providing completed designs, studies or both as indicated in consultant contract. For project design, the consultant is responsible for providing plans and specifications to fully describe the equipment, materials and work for completion of the project in accordance with the criteria, funding and scope provided by the director. Periodically, as scheduled in the contract, the consultant will submit work for review and approval. The submissions will include estimated costs for all project work. When estimates for the complete project work exceed allocated funding, the consultant immediately shall notify the director, recommending adjustments and requesting further instructions before proceeding with additional design and/or study. Acceptance of the contract by the consultant includes acceptance of the adequacy of allocated funding for the work and the responsibility for redesign, if necessary, to establish a scope of project work within allocated funding.

(A) Communication. Official communications for all designs and/or studies will be with the director. This will include all submissions for approval or payment, recommendations for modifications of scope or other guidance and resolution of any differences or problems encountered. Informal and working conferences with department/agency and site/complex personnel are essential and encouraged. Records and conclusions reached at those conferences will be forwarded as recommendations for the director's review and approval.

(B) Payments. Payment method and/or periods will be as stipulated in the consultant contract. Payment will be made after review and approval of work and/or demonstrated progress. After receipt by the director, review, approval and administrative processing of payment requests in the Office of Administration shall be completed within fifteen (15) working days. Where there appear to be differences between the payment request and the demonstrated progress, those differences shall be resolved by decision of the director or his/her designee. Review, approval and administrative processing shall then be completed within fifteen (15) working days after resolution of these differences.

(4) Design Review. Designs and/or studies

will be submitted to the director or his/her representative for review and approval. The reviews will be commensurate with the scope, complexity and cost of the work. Response to the designer shall be completed within ten (10) working days after receipt by the project manager and approval by the Division of Facilities Management, Design and Construction. One (1) complete copy of each submission will be forwarded by the designer to the department/agency simultaneously with the submission to the director or his/her representative. Comments by the department/agency representative, if any, will be forwarded to the project manager within five (5) working days after receipt of the design or study by the department/agency. Department/agency comments, along with comments of the Division of Facilities Management, Design and Construction, will be used as the basis for response to the designer. Adjustment of review period for large projects, projects requiring coordination with other agencies or for unusual or complex designs, may be granted by the director.

(A) Pre-Design Conference. A pre-design conference will be scheduled by the project/construction manager with the designer and the representative of the department/agency concerned. The project definitions established in the initial coordination will be reviewed to confirm or adjust project criteria, scope, cost, scheduling and funding allocation. Initial fund distribution for the cost elements of the project will also be reviewed to confirm or adjust this fund distribution. Limitations and/or requirements expressed in the appropriation language shall be carefully observed to assure that the project scope, costs, and funding remain within the authorization of the appropriations. The designer must agree that the scope of work can be accomplished within the available funding. When appropriate, the pre-design conference will be held at the project site to assure that all parties are familiar with the conditions under which the work will proceed and that accommodations necessary to support the work are available. The design schedule begins with completion of the pre-design conference. After that, no changes will be made in the scope or funding of projects without written approval of the director.

(B) Design Review Submissions. Normally, a minimum of three (3) design review submissions shall be made. These submissions will be required at approximately twenty percent (20%), fifty percent (50%) and one hundred percent (100%) of design completion to provide for timely review of technical and economic considerations in the design. For minor projects, the first two (2)

submissions, with the approval of the project/construction manager, may be combined to provide design reviews at fifty percent (50%) and one hundred percent (100%) of design completion.

1. Schematic. Initial submission (approximately twenty percent (20%)) shall provide drawings and an outline of specifications, in sufficient detail to demonstrate the proposed concept for arrangement, as well as the criteria and general parameters used for architectural, electrical, mechanical and structural development. Proposed innovative methods or development shall be presented in sufficient detail to permit a review in depth. An estimate shall be submitted in sufficient detail to demonstrate the costs of the various elements of work as well as the total cost for completion of all project work. A copy of all items in the schematic submission will be furnished to the end user who will occupy or use the completed project. Comments and/or recommendations of the end user will be forwarded simultaneously to the project/construction manager, the Division of Facilities Management, Design and Construction and the department/agency within five (5) working days after receipt by the end user. Comments by the department/agency will also be forwarded to the project/construction manager, Division of Facilities Management, Design and Construction. The project scope and cost estimate shall be reviewed carefully to assure compliance with requirements and/or limitations of appropriation language. Approval by the director's representative of schematic submission will indicate acceptance of or required revisions to, scope, criteria, design parameters and cost estimate.

2. Design development. The second submission (approximately fifty percent (50%)) shall provide drawings and outline specifications to indicate general architectural, electrical, mechanical and structural development of the approved concept. The development shall clearly demonstrate sizes, capacities and arrangement. Sufficient details shall be included to define major elements of architectural and structural work and to define sizing, location, routing and application of mechanical and electrical equipment and/or work. An estimate shall be submitted in sufficient detail to demonstrate costs of the various elements of work as well as the total cost for completion of all project work. The detail shall indicate costs for major items of equipment as well as a breakdown of labor and material costs for each trade with significant work on the project. When the first two (2) design review submissions are combined, a copy of all items in the design development submission will be forwarded to the end user



who will occupy or use the completed project. Comments and/or recommendations of the end user will be forwarded simultaneously to the project/construction manager, Division of Facilities Management, Design and Construction and the department/agency within five (5) working days. Comments and/or recommendations of the department/agency also shall be forwarded to the Division of Facilities Management, Design and Construction. When a project site is in a city or county, which has adopted codes for regulation of work involved in a project, the designer will furnish for information, one (1) courtesy copy of the design development drawings and specifications to the code review authority of that city or county. The transmittal shall note that the plans and specifications are furnished as a courtesy for information and that the code review authority, if it desires, may submit comments to the director's representative for consideration.

3. Final review. The final review submission is to contain one hundred percent (100%) of the completed drawings and specifications, including the documentation required to solicit bids. Drawings and specifications will be submitted in accordance with the latest issue of State of Missouri's Standard Specification Format as published by the Division of Facilities Management, Design and Construction. The documents are to be complete, and sealed by appropriate engineering and/or architectural disciplines. A final construction cost estimate shall be submitted in sufficient detail to demonstrate costs of the various elements of work as well as the total cost for completion of all project work. The detail shall indicate costs for major items of equipment as well as a breakdown of labor and material costs for each trade with significant work on the project. The final review documents and a copy of all previous comments and responses generated during the design development submission will be included with the submittal. Comments and/or recommendations of the end user will be forwarded simultaneously to the project/construction manager, Division of Facilities Management, Design and Construction and the department/agency within five (5) working days. Comments and/or recommendations of the department/agency also shall be forwarded to the Division of Facilities Management, Design and Construction.

4. Construction 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 bid-

ding. Upon receipt, the construction/project manager shall finalize the Divisions 0 and 1 specification sections of the bidding documents. Chief Engineer/Architect performs an administrative review of the documents and if acceptable signs the documents as appropriate.

(D) Codes and Standards. The following are adopted as the codes and standards for work under the Capital Improvement and Maintenance Program. The chief engineer/architect is the authority for code determinations.

1. *International Building Codes* (IBC—current edition);
2. The Americans with Disabilities Act (ADAAG—current edition);
3. *National Electric Code* (NEC—current edition);
4. *International Mechanical Code* (IMC—current edition);
5. *International Plumbing Code* (IPC—current edition);
6. National Fire Protection Association (NFPA 101—current edition);
7. 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. American Society of Mechanical Engineers (ASME—current edition);
9. American National Standards Institute (ANSI—current edition);
10. American Concrete Institute (ACI—current edition);
11. Sheet Metal and Air Conditioning Contractor's National Association (SMACNA—current edition);
12. 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) Current codes adopted by a Missouri city and/or county in which a project site is located. These codes are applicable to the extent that they are not in conflict with code determinations by the chief engineer/architect. 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 assist the director in establishing a list

of prospective bidders for projects they design. If necessary, consultants shall contact prospective bidders to determine and/or solicit interest in bidding for the work. The department/agency shall provide, within its capability, similar assistance.

(B) Bid Review and Recommendations. The project/construction manager shall 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 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 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 forward to the director its written recommendation for subsequent action on the project. When requested by the director, the designer also shall forward, within five (5) working days, a recommendation on the bids received and/or subsequent action on the project.

(6) Exceptions. Exceptions to the requirements of this rule may be granted by the commissioner of administration or his/her designee upon presentation of satisfactory justification for those exceptions.

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

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempted from the 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 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. 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.*

**Original authority: 8.310, RSMo 1958, amended 1965, 1984, 1987, 1995 and 8.320, RSMo 1958, amended 1965.*

1 CSR 30-3.035 Project Selection/Bidding Methods

(Rescinded April 30, 2019)

AUTHORITY: section 8.291, RSMo Supp. 2007. Original rule filed Nov. 5, 2007, effective June 30, 2008. Rescinded: Filed Aug. 31, 2018, effective April 30, 2019.

1 CSR 30-3.040 Project Contracts and Work Completion

PURPOSE: This rule establishes the procedures for accomplishing the work on Capital Improvements and Maintenance Projects.

(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) Project Supervision. The director, as representative for the owner, shall be responsible for supervision of work on all projects under this program.

(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 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 information and informal coordination 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 and the designer in observing the work, equipment and materials on the site. Unusual occurrences or apparent problems will be reported to the inspector 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 shall have responsibility for supervision and administration of the contract(s) on the project(s). This representative shall:

1. Issue, in coordination with the designer, official instructions to the contractor, provide coordination as necessary with site personnel and verify work or materials included in payment estimates;

2. Assist with coordinating and scheduling the work and provide coordination between contractors working at the project

site;

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

4. Notify the department/agency program manager/service level manager of scheduled visits, meetings and inspections; and

5. Maintain 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:

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

2. Issue, in coordination with the inspector, 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 include a resume 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:

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 shall call together the contractor, the designer, a site 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 for any requirements or conditions requiring special attention.

(F) Construction Progress Meetings. The inspector 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 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 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 coordinate proposed changes with the inspector 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. Submission and approval of an encumbrance in the amount of the contract change shall proceed concurrently with approval and signature for the contract change. Notice to proceed with work under a contract change shall 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 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. The inspector, 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 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 be invited to participate in the final inspection along with the inspector, 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 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. 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 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 pro-

ject 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 providing satisfactory service. Deficiencies shall be noted and the contractors 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 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) 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 and subsections 6 and 7 of section 15, 1974 Reorganization Act. 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. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded and readopted: Filed Nov. 5, 2007, effective June*

30, 2008.

**Original authority: 8.310, RSMo 1958, amended 1965, 1984, 1987, 1995 and 8.320, RSMo 1958, amended 1965.*

1 CSR 30-3.050 Project Payments, Acceptance and Occupancy

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

(1) Payments. Payments shall be made after review and verification of work and materials in place and/or on-site. Review and verification shall be accomplished as part of the periodic construction progress meeting. Apparent differences between the requests for payment and work or material shall be resolved in order that the request for payment may be signed by the construction manager, contractor and 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, the payment request shall be transmitted to the department/agency. Signature for the department/agency and return to the Division of Facilities Management, Design and Construction shall be accomplished by the department/agency within five (5) working days after receipt of the payment request.

(A) Projects Costing One Hundred Thousand Dollars (\$100,000) or More. Payment for labor and material on projects costing one hundred thousand dollars (\$100,000) or more shall be made in accordance with section 8.260, RSMo Supp. 2007. Requests for payments shall be submitted in the form and be supported by documentation as may be required by the director. When more than one (1) payment is made on those projects, the contractor shall furnish a payment certificate with the second and succeeding payment requests. The certificate shall affirm that subcontractors and suppliers have been paid in proportion to the work and materials paid for on previous payment requests.

(B) Projects Costing Less Than One Hundred Thousand Dollars (\$100,000). Payment for labor and materials on projects costing less than one hundred thousand dollars (\$100,000) shall be made in accordance with section 8.270, RSMo Supp. 2007. Requests for payment shall be submitted in the form and be supported by documentation as required by the director.



(C) Final Payment. Final payment shall not be made until all work under the contract has been completed and accepted, documentation as required by the director has been furnished and project records have been delivered to the construction manager. The contractor shall provide releases from all subcontractors and suppliers or a letter of release from the surety holding the performance and payment bond evidencing that they have been paid in full or covered by the bond provisions. After review and approval of the requests for payment, reports, records and other documentation by the director or his/her designee, final payment may be made. Administrative processing of final payment in the Office of Administration shall be completed within fifteen (15) working days after receipt by the director of completed documentation and final payment request.

(D) Projects Supported with Non-Appropriated Funds. All payments for projects supported directly with donated, grant or other funding not appropriated by the general assembly shall be made in accordance with agreements established in the initial coordination and after approval of the director or his/her designee.

(2) Acceptance and Occupancy.

(A) Acceptance. After completion of all work (including deficiencies or discrepancies noted in the final inspection) and delivery of project records, the director or his/her designee shall issue final payment acknowledging acceptance of the project.

(B) Occupancy. The employees of the department/agency shall not occupy the facility or area where the project work is performed until after acceptance by the director. In exceptional circumstances, the director may establish conditions for occupancy prior to final acceptance.

(C) Project Records. The construction manager/project manager shall deliver one (1) copy of project shop drawings, operation and maintenance manuals, record drawings, warranties and all other pertinent files to a representative of the department/agency. The department/agency shall cause these records to be preserved and stored at the project site or other suitable location. Those records shall be readily available for reference in maintenance, repair and future work at the site.

(D) Reporting Changes in Facility Conditions. The department/agency as part of the periodic facility inspection process shall report any substantive change in condition of the facility to the director. Substantive changes in condition of the facility resulting from accidents, acts of God or other causes

shall be reported to the director at the time of occurrence.

(3) Exemptions. There are specific exemptions from requirements of this rule provided by the *Missouri Constitution* or by statute.

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempt from the 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 requires coordination with or approval by the commissioner of administration, or both Division of Facilities Management, Design and Construction for approval of payments.

(4) This rule becomes effective with the appropriation for the upcoming fiscal year.

AUTHORITY: sections 8.310 and 8.320, RSMo 2000. 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.*

**Original authority: 8.310, RSMo 1958, amended 1965, 1984, 1987, 1995 and 8.320, RSMo 1958, amended 1965.*

1 CSR 30-3.060 Determination of Contractor Responsibility

PURPOSE: This rule establishes the procedures for determining contractor responsibility and eligibility for state contracts.

(1) The director shall have the authority to declare a bidder not responsible and eligible for contract award. The determination of non-responsibility shall be made in accordance with the procedures set forth in this rule.

(2) Definitions.

(A) Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. 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 determination of ineligibility of a person which has the same or similar management, ownership

or principal employees as the ineligible person.

(B) Bidder. A bidder is 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) Debarment means the disqualification of a contractor for a period of one (1) year and until reinstated under rules established by the director. A disbarred contractor will not be eligible to receive invitations for bids or requests for proposals or the award of any contract by Facilities Management Design and Construction (FMDC). Disbarment is also applicable to selection of consultants by the state and entry into a contract as a joint venture, contractor, subcontractor, or consultant or subconsultant on state projects. Reinstatement will only be permitted after having fully complied with the terms of the original disbarment.

(D) Person. A person is defined as an individual, corporation, partnership, association or legal entity.

(E) Principal. A principal is defined as 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.

(3) Determination of Responsibility. The director shall make a preliminary determination that a bidder is not responsible and is ineligible to be awarded a contract in accordance with 1 CSR 30-3.040(2)(A).

(A) A finding of non-responsibility shall be based on the contractor's capability in all respects to fully perform the contract requirements, possession of integrity and reliability which will assure good faith performance, financial condition, ability to prosecute the work as bid and the past quality of their work, including project superintendence and management, on previous projects for the Division of Facilities Management, Design and Construction.

(B) Notice of that finding shall be sent to the bidder by certified mail, return receipt requested. The notice shall contain a statement as to the factual basis for the bidder's ineligibility, the length of the ineligibility and an explanation of what the bidder must do to be found eligible to again submit bids on contracts.

(C) Upon receipt of notice of ineligibility, the bidder may request a hearing in front of the director or appointed designee. The hearing shall be informally conducted and shall provide the bidder or affiliates an opportunity to present any facts which may tend to show that the bidder is in fact responsible.



(D) Any request for hearing must be post-marked within ten (10) consecutive calendar days of the date of receipt of the notice as evidenced by the return receipt.

(E) 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 declaration of ineligibility, the length of ineligibility and the showing required for the bidder to once again be determined eligible to bid on contracts. The determination may affirm, reverse or modify the preliminary determination.

(4) Ineligibility. During the period of ineligibility a bidder may not participate in any contract with the Division of Facilities Management, Design and Construction. This restriction includes being a subcontractor or supplier to any eligible bidder, as well as submitting a bid in his/her own name.

(A) If an ineligible bidder enters into any contract to perform work on a state project during the period of ineligibility, the director may issue a new determination of ineligibility, extending the time or changing the showing which the bidder must make to be determined eligible to perform work on future contracts.

(B) Any eligible bidder who contracts with an ineligible bidder to provide labor or materials on a contract with the Division of Facilities Management, Design and Construction may be declared not responsible and ineligible to bid on future contracts.

(C) A determination of ineligibility may extend to any affiliate of the bidder who had actual or constructive knowledge of the preliminary determination of ineligibility.

(D) After the period of ineligibility has expired, the bidder may apply to the director to be declared eligible. The bidder must make that showing which was set forth in the final determination of ineligibility. If the bidder applies for reinstatement but is unable to demonstrate business and financial competency to the director they shall continue to be ineligible until the required information is provided.

(5) Appeal. The bidder may request that the director's determination be reviewed by the commissioner of administration or appointed designee.

(A) 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 final determination as evidenced by the return receipt.

The request must set forth specific reasons why relief should be granted.

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

(C) 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.

(6) Debarment. If the director believes that cause exists to suspend or debar a contractor, the director shall notify the contractor in writing of such basis or cause. The decision of the director regarding debarment is not a "contested case" as it is defined in Chapter 536, RSMo.

(A) The division director may impose debarment on a company or firm and their named principals for any or a combination of the following reasons:

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

2. Violation of antitrust statutes;

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

4. Commission of any other offense 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 shall not be considered to be a basis for debarment.

*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.*

**Original authority: 8.320,RSMo 1958, amended 1965.*