



MISSOURI LEGISLATURE AFFIRMS USE OF DESIGN-BUILD AND ALTERNATIVE PROJECT DELIVERY FOR POLITICAL SUBDIVISIONS

On July 1, 2016, the Governor of Missouri signed HB 2376, which provides broad enabling authority for the use of Design-Build (DB) and Construction Management-at-Risk (CMAR) for political subdivisions in Missouri. In summary, the bill accomplishes three main objectives.

1. Enables the use of Design-Build project delivery for political subdivisions engaging in "Civil Works" projects and non-civil works. Civil Works in the context of Design-Build includes roads, streets, bridges, utilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects, with no dollar threshold; and non-civil works projects including buildings, site improvements and other structures, commonly designed by architects in excess of \$7 million. **Design-build for wastewater or water storage conveyance or treatment projects is addressed separately under the legislation and is not included in the definition of Civil Works. Water and wastewater projects are not subject to the same prescriptive procurement and contracting approach defined for Civil Works.**
2. The drafters of the legislation recognized the complexity and variability of **water and wastewater infrastructure projects**. They further recognized the importance of collaboration between the design-builder, the owner, and the facility's operations and maintenance personnel in the process of defining the design, treatment process performance, consideration of reliability, life cycle cost and potential impacts on public health.

The drafters of the legislation further recognized that the three-step process specified for Civil Works projects would not facilitate a "Progressive Design-Build" contract arrangement, which maximizes collaboration, innovation and value for complex projects while minimizing the time and expense involved in the procurement process.

This legislation enables political subdivisions to enter into a "water or wastewater contract" for design-build of a wastewater or water storage, conveyance or treatment facility project but **does not require the mandatory three-step procurement process required for Civil Works projects**. Rather this legislation allows the political subdivision to devise procurement procedures that best address the unique circumstances and complexities of water and wastewater infrastructure projects. This legislation validates the use of multiple procurement processes, including "Progressive Design-Build" and qualifications-based section of a design-builder. Furthermore, the legislation provides that:

- a. Community Development Block Grants cannot be denied for water or wastewater design-build projects solely on the basis of the project being design-build.
- b. The Department of Natural Resources may not preclude design-build projects from State Revolving Fund (SRF) funding because the project is design-build.
- c. The political subdivision must retain a duly licensed engineer to assist in preparing any necessary documents such as specifications and evaluations of a design-builder's proposals.

For Civil Works projects (excluding water and wastewater), the legislation requires a prescriptive three-step procurement process, consisting of 1) a qualifications competition to narrow the pool of proponents to a short list of between two and five prequalified design-builders; 2) a technical or design competition based on a mandatory design criteria package prepared by a "design criteria consultant;" and 3) a commercial or price competition based on the design-builders' proposed designs.

The evaluation of the technical submission must account for no less than 40 percent of the evaluation, while cost is to account for no more than 60 percent of the evaluation.

Further, the legislation requires that the political subdivision retain the services of a "design criteria consultant."

The prescribed procurement and contracting approach for Civil Works projects can be time-consuming and expensive. Therefore the legislation requires the political subdivision to pay a "reasonable" stipend to any prequalified design-builder who submits a responsive proposal but is not selected.

3. Enables the use of Construction Manager at Risk (CMAR) for political subdivisions engaging in "Civil Works" projects. Civil Works in the context of CMAR includes roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution, wastewater conveyance facilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects in excess of \$2 million; and non-civil works projects such as buildings, site improvements and other structures, habitable or not, commonly designed by architects in excess of \$3 million.

The CMAR must competitively bid all elements of the work other than minor work included in the general conditions. The CMAR may self-perform work but is subject to the same competitive bidding requirements as trade contractors, subcontractors and equipment suppliers.



Frequently Asked Questions (FAQs)

Q: Who is covered by this legislation?

A: Political subdivisions, including townships, cities, towns, villages, school, road, drainage, sewer and levee districts, and any other public subdivision, public corporation or public quasi-corporation having the power to tax.

Q: Who is not covered by this legislation?

A: Any metropolitan sewer district established under Mo. Const. Art. VI § 30 (Note: The Metropolitan St. Louis Sewer District already has its own statute permitting use of design-build, RSMo. § 249.425); and any special charter city, or any city or county governed by “home rule” under Mo. Const. Art. VI §§ 18 or 19 that has adopted Design-Build or CMAR by ordinance, rule or regulation.

Also, CMAR civil works of \$2 million or less, and non-civil works of \$3 million or less are not covered. For Design-Build, non-civil works — such as buildings, site improvements, and other structures, habitable or not, commonly designed by architects of \$7 million or less — are not covered.

Q: What types of civil works projects are approved for CMAR under the legislation?

A: Civil works projects approved for CMAR are roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects commonly designed by engineers.

Q: What types of civil works projects are approved for Design-Build but require a three-step process to select a design-builder?

A: Civil works projects approved for Design-Build using a three-step selection process are roads, streets, bridges, utilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects commonly designed by engineers. This definition intentionally excludes water and wastewater projects. Procurement of a design-builder for water and wastewater infrastructure projects is not subject to the three-step procurement process.

Q: What types of projects are approved for Design-Build but do not require a three-step process to select a design-builder?

A: Wastewater or water storage, conveyance, or treatment facility projects.

Q: Why are water and wastewater infrastructure projects exempted from the three-step selection process?

A: The drafters of the legislation recognized the complexities of water and wastewater infrastructure and the potential benefits and consequences to public health and the environment. They also recognized that the highest value that design-build brings to any project is the ability for the designer, builder owner, and operations and maintenance staff to collaborate on the

design development and details of construction and their impacts on project performance and life cycle cost. The three-step procurement process would not facilitate this level of collaboration. The legislation allows for a “progressive design-build” procurement arrangement, which maximizes value while minimizing procurement time and cost.

Q: Does the legislation mandate a process for procurement of a design-builder for water and wastewater infrastructure projects?

A: The legislation does not specify any particular process for procurement of a design-builder for water or wastewater projects. Owners may devise procurement procedures that best meet their particular project needs. DBIA recommends a “Progressive Design-Build” approach for complex projects such as water and wastewater.

Q: What are the industry’s best practices and procedures for selection of a design-builder for water and wastewater infrastructure projects?

A: Both the Design-Build Institute of America (DBIA) publication “Design-Build Done Right” and the Water Design-Build Council (WDBC) “Procurement Guide” provide guidelines on best practices and a procurement guideline for progressive design-build.

Q: Who should I contact for more information regarding Missouri’s Design-Build legislation?

A: Please contact Bill Quatman, who serves as chairman of the DBIA National Board of Directors and worked with the Missouri legislature and statewide stakeholders to draft Missouri’s Design-Build legislation. In addition, you may contact Oretta Smith, who serves as DBIA’s Mid-America Region executive director.

Bill Quatman, Esq.

DBIA Chairman, National Board of Directors
General Counsel, Burns & McDonnell Engineering Co. Inc.
816-822-3353
bquatman@burnsmcd.com

Oretta Smith

DBIA Mid-America Region Executive Director
816-506-1881
Oretta.smith@dbiamar.org

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