

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE enacting sections 1067., 1068., and 1069., Jackson County Code, 1984, relating to design-build construction contracts.

ORDINANCE NO. 5556, October 11, 2021

INTRODUCED BY Theresa Cass Galvin, County Legislator

WHEREAS, Jackson County is a home rule charter county, organized pursuant to article VI, section 18 of the Constitution of Missouri; and,

WHEREAS, any county operating under home rule charter pursuant to article VI, section 18 of the Constitution of Missouri may adopt a design-build construction process via ordinance; rule, or regulation and,

WHEREAS, Jackson County, pursuant to article III, section 6.2 of the Jackson County Charter, adopted a procurement policy for design-build services by Executive Order 94-24, dated October 6, 1994; and,

WHEREAS, the design-build policy adopted by the County pursuant to its home rule charter is legal, proper in form and content, and does not contravene applicable Missouri law; and,

WHEREAS, the Legislature now desires to provide an alternative design-build procedure by ordinance, which is consistent with Missouri's corresponding statutory provisions contained in section 67.5060, RSMo; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows.

Section A. Enacting Clause

Sections 1067., 1068., and 1069., Jackson County Code, 1984, are hereby enacted, to read as follows:

1067. Definitions.

The following definitions apply to sections 1067.-1069. of this chapter:

1067.1 Design-Build.

“Design-Build” is a project delivery method subject to a three-stage, qualifications-based selection for which design and construction services are furnished under one contract.

1067.2 Design-Build Contract.

A “Design-Build Contract” is a contract which is awarded pursuant to a three-stage qualifications-based selection process between the County and a Design-Builder to furnish the architectural, engineering, and related design services and the labor, materials, supplies, equipment, and other construction services required for a Design-Build Project.

1067.3 Design-Build Project.

A “Design-Build Project” is the design, construction, alteration, addition, remodeling, or improvement of any buildings or facilities under contract with the County via use of a Design-Build Contract. Such Design-Build projects include, but are not limited to:

- a. Civil works projects, such as 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, and transit projects; and
- b. Noncivil works projects, such as buildings, site improvements, and other structures, habitable or not, commonly designed by architects and estimated to cost more than ten million dollars in design and construction costs.

1067.4 Design-Builder.

A “Design-Builder” is any individual, partnership, joint venture, or corporation subject to a qualification-based selection that offers to provide or provides design services and general contracting services through a Design-Build Contract under which services within the scope of the practice of professional architecture or engineering are performed respectively by a licensed architect or licensed engineer and under which services within the scope of general contracting are

performed by a general contractor or other legal entity that furnishes architecture or engineering services and construction services either directly or through subcontracts or joint ventures.

1067.5 Design Builder Cost.

“Design-Builder Cost” includes contractor fees, contractor overhead, bonds and insurance, design fees, and expenses.

1067.6 Design Criteria Consultant.

A “Design Criteria Consultant” is a person, corporation, partnership, or other legal entity duly licensed and authorized to practice architecture or professional engineering in the State of Missouri, that is employed by or contracted by the County to assist in the development of project design criteria, requests for proposals, evaluation of proposals, the evaluation of construction under a Design-Build Contract to determine adherence to design criteria, and any additional services requested by the County to represent its interests in connection with a Design-Build Project. The Design Criteria Consultant may not submit a proposal or furnish design or construction services for a Design-Build Contract for which its services were retained.

1067.7 Design Criteria Package.

A “Design Criteria Package” is a performance-oriented program, scope, and specifications for a Design-Build Project sufficient to permit a Design-Builder to

prepare a response to the County's Request for Proposals for a Design-Build Project, which may include capacity, durability, standards, ingress and egress requirements, performance requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, preliminary designs for the project or portions thereof, and other criteria for the intended use of a Design-Build Project.

1067.8 Design Professional Services.

"Design Professional Services" are services that are performed by a licensed or authorized architect or professional engineer in connection with the architect's or professional engineer's employment or practice in accordance with sections 327.091 and 327.181, RSMo.

1067.9 "Design-to-Budget".

"Design-to-Budget" is the total budget established by the Director for all design, construction, and other services required to be provided by a Design-Builder. The Design-to-Budget amount is to be stated in the RFQ and RFP and provided as a requirement of the Design-Build Contract between the County and a Design-Builder.

1067.10 Director.

“Director” is the County’s Director of Finance and Purchasing or that officer’s designee.

1067.11 Owner’s Representative.

An “Owner’s Representative” is a person, corporation, partnership, or other legal entity duly licensed and authorized to practice architecture or professional engineering in the State of Missouri, that is employed by or contracted by the County to assist in the overall development of a Design-Build Project.

1067.12 Proposal.

A “Proposal” is a response to a Request for Proposals by a Design-Builder to enter into a Design-Build Contract for a Design-Build Project under this chapter.

1067.13 Request for Proposals (RFP).

A “Request for Proposals” is a document by which the County solicits formal proposals for a Design-Build Contract.

1067.14 Request for Qualifications (RFQ).

A “Request for Qualifications (RFQ)” is a document by which the County invites interested parties to submit qualifications to provide Design-Build services.

1068. Request for Qualifications and Proposals Process.

1068.1 Scope.

If the County determines it to be beneficial, the County may choose to utilize the Design-Build project delivery method in undertaking a construction project. In using Design-Build, the Director shall determine the scope and level of detail required to permit qualified entities to submit Proposals in accordance with the Request for Proposals and consistent with the nature of the Design-Build Project.

1068.2 Design Criteria Consultant.

A Design Criteria Consultant may be employed or retained by the County to assist in preparation of the Design Criteria Package and observe adherence to the design criteria. An Owner's Representative may be retained to provide the services of the Design Criteria Consultant and assist with the Request for Proposals, perform periodic site visits to observe adherence to the design criteria, prepare progress reports, review and approve progress and final pay applications of the Design-Build, review shop drawings and submissions on the County's behalf, provide input in disputes, perform observations upon substantial and final completion, assist in warranty inspections, and provide any other professional service assisting with project administration. The Design Criteria Consultant and/or the Owner's Representative may also evaluate construction as to the adherence to the design criteria.

1068.3 Notice.

Notice of Requests for Qualifications and Proposals shall be advertised by publication in a newspaper of general circulation published in the County once a week for two consecutive weeks prior to opening the responses, or by a virtual notice procedure that notifies interested parties to at least twenty various purchases, design contracts, construction contracts, or other contracts each year for the County. The County shall publish a notice of a Request for Qualifications and Proposals with a description of the project, the procedures for submission, and the selection criteria to be used.

1068.4 Solicitation Procedure.

The Director shall establish in the Request for Qualifications and Request for Proposals a time, place, and other specific instructions for the receipt of qualifications and Proposals. Qualifications responses and Proposals not submitted in accordance with the instructions are subject to rejection.

a. Three-Stage Process.

The Director shall solicit proposals in a three-stage process. Phase I shall be the solicitation of qualifications of the Design-Build teams. Phase II shall be the solicitation of technical proposals to include a project approach and other detailed information as set forth in the Request for Proposals. Phase

III shall be the solicitation of cost proposals for contractor fees, contractor overhead, bonds and insurance, design fees and expenses, and hourly rates for contractor and design personnel. Phases II and III will be issued concurrently after Phase I.

b. Phase I/Request for Qualifications.

Under Phase I of the process, the Director shall prepare a Request for Qualifications of the Design-Builder teams. The County shall state the selection criteria in the Request for Qualifications. A Request for Qualifications prepared for each Design-Build Contract shall contain at minimum the following elements:

- i. The procedures to be followed for submitting statements of qualifications, the criteria for evaluating each Design Builder's qualifications, an assessment of each submission, and the process to qualify a Design-Builder to be short-listed and thus eligible to move to Phase II;
- ii. Any Design-to-Budget requirements for the Design-Build Contract.
- iii. Requirements including any available ratings for performance bonds, payment bonds, and insurance;

iv. A summary of project goals, scope, and timeline for project completion; and,

v. Any other information the Director, in the Director's discretion, chooses to provide including, but not limited to, surveys, soil reports, drawings of existing structures, environmental studies, photographs, references to public records, and or affirmative action and minority and/or disadvantaged business enterprise requirements consistent with state and federal law and the County Code.

c. Phase II/Request for Proposals.

Under Phase II of the process, the Director shall prepare a Request for Proposals from the short-listed Design-Builders. The Director shall state the selection criteria in the Request for Proposals. A Request for Proposals prepared for each Design-Build Contract shall contain at minimum the following elements:

i. The procedures to be followed for submitting Proposals, the criteria for evaluating Proposals and their relative weight, and the procedures for selection.

ii. The proposed terms and conditions for the Design-Build Contract, if available.

iii. The Owner's Design Criteria Package.

iv. If required, a description of the drawings, specifications, or other information to be submitted with the proposal with guidance as to form and level of completeness of the drawings, specifications, or other information that will be acceptable.

v. A schedule for planned commencement and completion of the Design-Build Project.

vi. Design-to-Budget requirements for the Design-Build Contract, if any.

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

viii. Any other information that the Director, in the Director's discretion, chooses to supply including, but not limited to surveys, soil reports, drawings of existing structures, environmental studies, photographs, references to public records, or affirmative action and

minority and/or disadvantaged business enterprise requirements consistent with state and federal law and the County Code.

1069. Evaluation of the Responses to the Requests For Qualifications and Proposals

1069.1 Statement of Qualifications.

Phase I shall require all Design-Builders to submit a statement of qualifications that shall include, but need not be limited to:

a. Ability to Perform.

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

b. References.

References of owners for whom similar Design-Build Projects, construction projects, or design projects have been performed;

c. Qualifications of Personnel.

Qualifications of personnel who will lead and manage the design and construction aspects of the Design-Build Project; and

d. Design Consultants and Trade Contractors.

The names and qualifications of the primary design consultants and the primary trade contractors with which the Design-Builder proposes to subcontract or joint venture. A Design-Builder may not replace an identified contractor, subcontractor, design consultant, or subconsultant without the written approval of the Director.

1069.2 Short-Listing.

The County shall evaluate the qualifications of all the Design-Builders that submitted proposals in accordance with the instructions of the Request for Qualifications. Qualified Design-Builders selected by the County's evaluation team may proceed to Phase II of the selection process. Design-Builders lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to Phase II of the process. This process of short-listing shall narrow the number of qualified Design-Builders to not more than three, nor fewer than two. Under no circumstances shall Design-Builder costs or fees be a part of the prequalification criteria. Design-Builders may be interviewed in Phase I of the process. Points assigned in Phase I of the evaluation process shall not carry forward to Phase II of the process. In Phase II, short-listed Design-Builders shall be ranked on points awarded in Phase II only. The Director shall have discretion to disqualify any Design-Builder that, in the Director's opinion, lacks the minimum qualifications required to perform the work. After no more than three and no fewer than two qualified design-builders have been selected, the short-listed Design-

Builders shall have a specified amount of time in which to assemble Phase II and Phase III Proposals.

1069.3 Evaluation of the Design-Builder, Phase II.

Phase II of the process shall be conducted as follows:

a. Invitational Request for Proposals.

The Director shall invite the top-qualified, short-listed Design-Builders to participate in Phase II of the process by the issuance of a Request for Proposals.

b. Technical Proposal.

A Design-Builder shall submit its technical response to the Request for Proposals at the level of detail required in the Request for Proposals. The technical proposal shall demonstrate compliance with the requirements set out in the Request for Proposals, including a management plan, staffing plan, project approach and timeline.

c. Ability to Meet Schedule.

The ability of the Design-Builder to meet the schedule for completing a project as specified by the Director may be considered as an element of evaluation in Phase II.

d. Ability to Meet Design-to-Budget Requirements.

The ability of the Design-Builder to meet any Design-to-Budget requirement for completing a project as specified by the Director may be considered as an element of evaluation in Phase II.

e. Response Regarding Ability to meet Design-to-Budget Requirements.

A Design-Builder may provide a statement confirming it can meet Design-to-Budget requirements as defined by the RFP or alternatively identify factors related to design which may impact costs.

f. No Reference to Fees.

Under no circumstances shall the Phase II technical design Proposal contain any reference to the Design-Builder's costs or fees of the Proposal; and

g. Evaluation and Assignment of Points.

The submitted technical Proposals shall be evaluated and assigned points in accordance with the requirements of the Request for Proposals.

h. Interview.

Upon receipt and review of the submitted responses, the County, as part of the evaluation process, may elect to interview the Design-Builders as set forth in the Request for Proposals.

1069.4 Evaluation of the Design-Builders, Phase III

Phase III shall be conducted as follows:

a. Cost Proposal Contents.

The Phase III cost Proposal shall provide a firm, fixed schedule of contractor fees, contractor overhead, bonds and insurance, design fees and expenses, and hourly rates for contractor and design personnel. The proposal shall be accompanied by exhibits and other supporting documentation, as set forth in the Request for Proposals;

b. Submission Process.

Cost Proposals shall be submitted in accordance with the instructions of the Request for Proposals. The Director shall reject any proposal that is not timely submitted.

c. Separate Submissions Required.

Proposals for Phase II and Phase III shall be submitted concurrently at the time and place specified in the Request for Proposals, but in separate envelopes or other separate means of submission. The Phase III cost Proposals shall be opened only after the Phase II design Proposals have been evaluated and assigned points, ranked in order, and posted.

d. Opening of Cost Proposals.

Cost Proposals shall be opened at the time and place specified in the Request for Proposals. At the same time and place, the evaluation team shall make public its scoring of Phase II. Cost proposals shall be evaluated in accordance with the requirements of the Request for Proposals.

1069.5 Rejection of Proposals

If it is not in the best interests of the County to proceed with the Phase III cost Proposal submitted by the Design-Builder with the highest total number of Phase II points, the Director shall consider the cost Proposal of the Design-Builder with the next highest Phase II point total. If all Proposals are rejected, the Director may solicit new Proposals using different design criteria, budget constraints, and/or qualifications.

1069.6 Bond Requirements.

Payment bond requirements, as established by applicable Missouri law and County Code provisions, shall apply to a Design-Build Project. All persons furnishing design services shall be deemed to be covered by the payment bond in the same manner as any person furnishing labor and materials. However, the performance bond for a Design-Builder need not cover design services if the Design-Builder or its design consultants providing design services carry

professional liability insurance in an amount established by the Director in the Request for Proposals.

1069.7 Award by County Legislature.

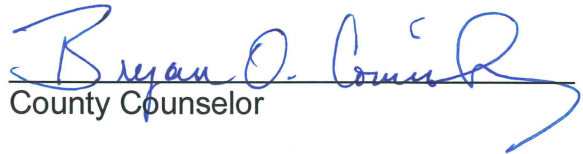
After all phases of evaluation have been completed, the Director may initiate the introduction of a legislative item before the County Legislature for the award of a Design-Build Contract to the Design-Builder that has submitted the overall best proposal. No Design-Build Contract may be executed pursuant to this chapter without the adoption of an Ordinance or Resolution by the County Legislature authorizing the award of the contract

Effective Date: This ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:



Chief Deputy County Counselor



County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5556 introduced on October 11, 2021, was duly ~~passed on~~ **WITHDRAWN OCT 18 2021**, 2021 by the Jackson County Legislature. The votes thereon were as follows:

Yeas _____

Nays _____

Abstaining _____

Absent _____

WITHDRAWN OCT 18 2021

This Ordinance is hereby transmitted to the County Executive for his signature.

Date

Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5556.

Date

Frank White, Jr., County Executive