

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2270-01
Bill No.: HB 1042
Subject: Contractors and Contractor; Political Subdivisions; Licenses - Professional
Type: Original
Date: March 17, 2015

Bill Summary: This proposal modifies provisions related to design-build contracts.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government	(Unknown exceeding \$1 million)	(Unknown exceeding \$1 million)	(Unknown exceeding \$1 million)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **City of Kansas City** assume the City will incur additional advertisement costs if required to advertise in newspapers as required by §8.250. The specific amount is not known because it will depend on the number of projects. The City currently advertises all bids on the web (City's "Plan Room") which allows contractors to download and print construction plans and bidding documents for free. This requirement will also add additional time to the completion of projects thus increasing administrative costs.

Additional costs may be incurred by the payment of stipends to unsuccessful contractors for certain types of design build projects. Additional undetermined costs may be incurred by the City's inability to procure contracts through Design Build if the project exceeds twenty-five million dollars. Currently the City can procure Design Build contracts regardless of the amount of the project if this procurement method is found to be in the best interest of the taxpayers. Finally, the City will incur additional costs if it's required to hire a design professional to assist with the design-build procurement process. Many of those functions can and are currently performed by in-house forces and professionals.

Officials at the **City of Liberty** assume a negative impact to the City from this proposal if the City is restricted and/or unable to do projects using design build. Design build has the potential to save millions of dollars on projects especially if they are larger in nature. The negative fiscal impacts would be in the millions of dollars on all future projects where design build could be used.

Officials at the **Department of Economic Development** deferred their response to the Office of Administration.

Officials at the **Office of Administration's Facilities Management, Design and Construction (FMDC)** assume the bill provides, in §8.683, that a construction manager may bid to perform work on a project for which he or she serves as the construction manager if, among other things, the construction manager complies with all provisions of §67.5050. Similarly, §8.685 is modified by the bill to allow a construction manager to be at risk if all provisions of §67.5050 are complied with. Each of the provisions of §67.5050 relate to political subdivisions. As neither FMDC nor the state are a political subdivision as that term is used in the relevant statutes, it would appear to be impossible to comply with all of the provisions of §67.5050 when contracting with the state or with FMDC, as opposed to a political subdivision. Accordingly, FMDC assumes that the changes to §§8.683 and 8.685 will have no impact on FMDC. FMDC further assumes that, if any cost savings were realized as a result of the changes to §§8.683 and 8.685,

ASSUMPTION (continued)

such savings would be applied to accomplish other capital improvement or deferred maintenance projects.

Officials at the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Higher Education**, the **Office of Administration's Division of Purchasing and Materials Management**, the **Department of Natural Resources**, the **Department of Labor and Industrial Relations** and the **Department of Health and Senior Services** each assume no fiscal impact to their respective agencies from this proposal.

Officials at the **Callaway County Commission** and the **Platte County Board of Election Commission** each assume no fiscal impact to their respective entities from this proposal.

Officials at the Cole County Commission and the City of Liberty responded to **Oversight** but did not provide a response on fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
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LOCAL POLITICAL SUBDIVISIONS

<u>Costs</u> - Local Political Subdivisions - relating to design build contracts	(Unknown exceeding \$1 <u>million</u>)	(Unknown exceeding \$1 <u>million</u>)	(Unknown exceeding \$1 <u>million</u>)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	(Unknown exceeding \$1 <u>million</u>)	(Unknown exceeding \$1 <u>million</u>)	(Unknown exceeding \$1 <u>million</u>)

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

QUALIFICATIONS-BASED SELECTION OF CONSTRUCTION MANAGERS (Sections 8.683 and 8.685, RSMo)

This bill allows a construction manager awarded a construction management services contract or any construction firm affiliated with the construction manager to bid on or perform the actual construction on a public works project if the construction manager submits a sealed bid in the same manner as any other bidder, gives proper notice to other interested bidders, and complies with all of the provisions of Section 67.5050 proposed in the bill. The bill also allows a construction management services contract to be awarded by a public owner on a negotiated basis if the construction manager complies with all of the provisions of Section 67.5050 proposed in the bill. Currently, a construction management services contract must be let by competitive bidding if the construction manager or any construction firm affiliated with the construction manager guarantees or otherwise assumes financial responsibility for the work of others on the project, provides a guaranteed maximum price for the work of others, or furnishes or provides a performance or payment bond for the other contractors on the project.

CONSTRUCTION MANAGER-AT-RISK CONTRACTS (Section 67.5050)

This bill allows political subdivisions to use the construction manager-at-risk method for construction projects. In its main provisions, the bill:

- (1) Requires that, before selecting a construction manager-at risk, or during the selection process, the political subdivision must select an engineer or architect to prepare the construction documents, with full responsibility for complying with all applicable state laws;
- (2) Authorizes a political subdivision to use a one-step or two step process to select the construction manager-at-risk. The necessary procedures for both processes are outlined in the bill. The political subdivision is authorized to determine how it will publish its notice of request for proposals or qualifications;
- (3) Requires the political subdivision to publicly open and read aloud the names of the construction managers, and to evaluate and rank each proposal within 45 days of the opening of the proposals. The construction manager-at-risk that offers the best value must be selected. If the political subdivision fails to negotiate a satisfactory contract with the selected construction manager-at risk, the political subdivision must negotiate with the next highest ranked construction manager-at-risk;
- (4) Requires the construction manager-at-risk to publicly advertise and receive bids from trade contractors or subcontractors for the performance of all major elements of the work. The construction manager-at-risk can perform certain work if it provides the best value and is selected by the political subdivision. Both the political subdivision and the construction manager-at-risk must evaluate the bids, and the political subdivision may

FISCAL DESCRIPTION (continued)

compensate the construction manager-at-risk if the political subdivision requires that a different bid be accepted than the one recommended by the construction manager; and
(5) Specifies the procedures for when a selected trade contractor or subcontractor defaults in the performance of its work.

DESIGN-BUILD CONTRACTS (Section 67.5060)

The bill also authorizes political subdivisions to enter into design-build contracts for construction projects exceeding \$25 million. In its main provisions, the bill:

- (1) Provides definitions for certain terms used in the bill, including "design-build," "design-build contract," "design-build project," "design-builder," "design criteria consultant," "design criteria package," "design professional services," "proposal," "public facility construction project," "qualifications-based selection," "request for proposal," and "stipend";
- (2) Requires that, in order to protect the health, safety, and general welfare of the public, a design professional must own at least a 50% interest in the legal entity that is or contracts with the design-builder, or at least 50% of the members of the board of directors of the legal entity that is or contracts with the design builder must be design professionals;
- (3) Requires political subdivisions planning a design-build project to employ or retain a design criteria consultant as defined in the bill, and an architect or engineer, as appropriate to the project type and duly licensed in this state, to assist with the design criteria package, preparation of the request for proposals, pre-qualification of design-builders, and evaluation of proposals;
- (4) Requires political subdivisions to advertise the request for proposal in a certain manner and include certain information in the request for proposal;
- (5) Creates a three-stage process for the solicitation of proposals: phase I will be the solicitation of qualifications of the design-build team; phase II will be the solicitation of a technical proposal including conceptual design for the project; and phase III will be the proposal of the construction cost. Details regarding the requirements for each phase are set out in the bill;
- (6) Authorizes a political subdivision to pay a reasonable stipend, the amount of which must be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted;
- (7) Provides that the payment bond requirements that apply to public works contracts will also apply to design-build projects; and
- (8) Requires any person or firm providing architectural, engineering, landscape architecture, or land-surveying services to be licensed. The design-builder is exempt from the requirements involving certificates of registration or authority if the architectural, engineering, or land-surveying services are performed by subcontractors

FISCAL DESCRIPTION (continued)

who are properly licensed. The authority to use design-build and design-build contracts expires on September 1, 2025.

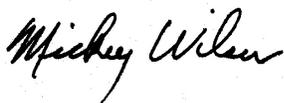
SPECIALTY CONSTRUCTION DESIGN (Section 67.5070)

The bill authorizes a political subdivision to require that a contractor provide a specialty construction design, as defined in the bill, as a portion of a construction contract if the requirement is specified in the bid documents written by a design professional. When disbursing grants under the Community Development Block Grant program, the Department of Economic Development is prohibited from rejecting waste water or water treatment projects solely on their utilization of specialty construction or specialty construction design. The Department of Natural Resources is prohibited from denying funds from the Water and Wastewater Loan Fund to projects based on their use of specialty construction or specialty construction design contracts.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

City of Kansas City
Department of Economic Development
Office of Administration
 Facilities Management, Design and Construction
 Division of Purchasing and Materials Management
Department of Insurance, Financial Institutions and Professional Registration
Department of Natural Resources
Department of Labor and Industrial Relations
Department of Health and Senior Services
Callaway County Commission
Platte County Board of Election Commission
Department of Higher Education
City of Liberty



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