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

	Title	Page
1 CSR 30-3.010	Rule Objectives and Definitions.....	3
1 CSR 30-3.020	Project Definition and Fund Allocation.....	3
1 CSR 30-3.030	Project Design.....	5
1 CSR 30-3.040	Project Contracts and Work Completion	7
1 CSR 30-3.050	Project Payments, Acceptance and Occupancy	10
1 CSR 30-3.060	Determination of Contractor Responsibility	11

Title 1—OFFICE OF ADMINISTRATION

Division 30—Design and Construction Chapter 3—Capital Improvement and Maintenance Program

1 CSR 30-3.010 Rule Objectives and Definitions

PURPOSE: This rule states the objectives of the rules of the Office of Administration and defines terms used in the rules under this chapter for implementing the Capital Improvement and Maintenance Program as established by appropriations.

(1) The following objectives are covered in the rules of this chapter:

(A) To establish a consistent procedure for defining projects and establishing funding allocation;

(B) To establish consistent procedures for coordinating designer selection, for negotiating design contracts and for projects designs;

(C) To establish consistent procedures for accomplishing the work on projects; and

(D) To establish consistent procedures for payment, acceptance and occupancy of projects.

(2) The following definitions will apply to terms used in rules under this chapter:

(A) Definitions as established under 1 CSR 30-2.020, 1 CSR 30-2.030 and 1 CSR 30-2.040(1)–(7);

(B) Budget items. The terms budget or budget items, as used in these regulations, refer to the executive budget (or an item in it) as submitted by the governor to the general assembly;

(C) Construction manager. The construction manager is the individual designated by the Division of Design and Construction to provide management and coordination of project work with the department/agency, the designer and the contractor. The construction manager shall be a state employee or consultant as designated by the director;

(D) Contingency. Contingency, as used in these regulations, refers to funding (from within an appropriation) set aside during the planning of a project. Contingency funding, set aside during the planning, is utilized to support unexpected or unforeseen requirements within the scope (size, capacity, special features) of a project which arise during design or progress of the work. Project scope is established by the language of appropriations and/or budget submissions;

(E) Director. Director, as used in these rules, will be interpreted to mean the director, Division of Design and Construction,

representing the Office of Administration, state of Missouri;

(F) Designer. The term designer, as used in these regulations, refers to the individual or firm that is responsible for preparation of plans and specifications for a project;

(G) Functional element. Functional element or using element, in these rules refers to the division, institution, section or other activity within a department/agency, which will occupy and use a completed project;

(H) Line item. A line item, as used in these rules, is an item which has been specified or defined in an appropriation. Line items also include the specific limitations of cost and/or scope. The scope established by line items in appropriations will frequently be further defined and explained in the budget items submitted to the general assembly;

(I) Nonappropriated funds. The term non-appropriated funds, as used in these regulations, refers to funding derived or received from any source other than an appropriation by the general assembly;

(J) Program. Program, as used in these rules, will be interpreted to mean the Capital Improvement and Maintenance Program; and

(K) Project manager. The project manager is the individual designated by the Division of Design and Construction to provide management and coordination of project design and to provide the professional/technical review of project design and/or change during construction work.

(3) This rule becomes effective with the appropriation for fiscal year 1983.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982.*

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

1 CSR 30-3.020 Project Definition and Fund Allocation

PURPOSE: This rule sets forth the procedures and methods for defining projects and for determining fund allocation from state appropriations.

(1) Initial Coordination. The initial coordination for programs supported with Capital Improvement and Maintenance Appropriations will establish the basis for expeditious planning and timely completion of projects. The initial coordination will include program and project definition, project fund allocation and scheduling of design and project work. Each department/agency for which a Capital

Improvement and Maintenance Appropriation is provided shall provide the director with a written outline indicating the department/agency's concept for implementing the program established by the appropriation. The department/agency, after coordination with the capital improvements manager in the Division of Design and Construction shall, submit the written outline within fifteen (15) calendar days after the appropriation is passed and signed. The initial coordination will be completed within forty-five (45) calendar days after the appropriations have been passed and signed.

(A) Program Manager. Each department/agency will designate a Capital Improvement and Maintenance Program Manager. The program manager will act for the department/agency in implementing the program established by appropriations.

1. Department/Agency. Within the guidance provided by the policies of the department/agency, the program manager will have the responsibility and authority for internal coordination and approvals for projects in this program. The program manager will be familiar with the details of priorities, scope, cost and justification data in the budget submission of the department/agency.

2. Division of Design and Construction. As an alternative when a department/agency Capital Improvement and Maintenance Program is too small to justify the expertise necessary for the program coordination and supervision, the Office of Administration will consider a request to designate an employee of the Division of Design and Construction as the program manager. A memorandum of understanding establishing the conditions and responsibilities of each party and signed by the commissioner of administration and the department director must be accomplished. Based on the memorandum of understanding, the Division of Design and Construction will then manage the program and will provide coordination with the department/agency in defining projects and funding, as well as review of design and work on projects.

(B) Project Manager. The Division of Design and Construction will designate project managers by geographic area, agency, site/location or specific project as appropriate for all projects within the Capital Improvement and Maintenance Program.

1. Responsibility.

A. Director, Division of Design and Construction. The director will act as consultant, serving as the owner's representative for all department/agencies. The director is the authority for determining scope and funding of projects and programs within the Capital

Improvement and Maintenance Appropriations. The director shall carefully review the appropriation and, when s/he deems it appropriate, consult with the appropriation committees to determine the legislative intent. The director shall review and approve all payments for consultants or project work, plans, specifications, contracts and change orders under the program.

B. Project managers. The project manager, within guidance provided by the director, will be responsible for professional and technical supervision of projects to include scheduling, coordinating, designing and accomplishing the work.

(C) Program Definition and Scheduling. The project manager will review, in coordination with the program manager, the program established by the Capital Improvement and Maintenance Appropriation. The purpose of this initial coordination is to review the department/agency program concept and determine the scope of the program and the scope of work for individual projects. During this review, priorities will be established for the individual projects along with requirements for coordination and scheduling of phases or elements of design, bidding and completion of the work for each project. This schedule will be used to monitor the progress of the program implementation.

1. Nonappropriated funds. Projects involving nonappropriated funds, which result in acquisition or construction of facilities to be partially or fully operated and/or maintained by Missouri, are considered to be part of the Capital Improvement and Maintenance Program. Initial coordination for these projects shall be accomplished within forty-five (45) calendar days after notification or establishment of commitment or authorization for the projects. The program manager of the department/agency will advise the director of the notification or authorization so that initial coordination can be accomplished within the forty-five (45) calendar-day period.

2. Projects requiring state contracts. Prior to acceptance of nonappropriated support funding for projects requiring state contracts, an agreement will be developed between the state and the donor or grantor. This agreement will include conditions for encumbrance, expenditure, fiscal control, project contracts, project management and project acceptance as well as the role and responsibilities of the state and the donor or grantor. The agreement and any subsequent changes shall be approved by the commissioner of administration or his/her designee.

(2) Project Definition. Project, as well as program definitions, are established by the language of the appropriations and the budget submission.

(A) Appropriation Language.

1. Specific line items. Appropriation items frequently define specific work items for a specific facility at a specific site/complex. Work items clearly within the scope defined in an appropriation line item may be scheduled and accomplished.

2. Combination of budget items. An appropriation line item may combine several budget items in a single broadly defined scope and provide a total funding for the combined items. Work items or projects scheduled and accomplished must be within the scope defined in the appropriation.

3. Combination of appropriation items. Work authorized by several appropriation line items may be combined into a single project when the director determines that this combination is in the best interest of the state. The director, in considering this combination, shall carefully examine the language of the separate appropriation line items to determine that the appropriation language does not prohibit this combination and that all work proposed is within the purpose and intent of the appropriations. The director, in defining this project, shall insure that the proposed scope of work for any item within the combined project does not exceed the scope authorized by the appropriation items. Combination of appropriation items may involve combining construction, maintenance and repair items into a single project under a single contract. With the concurrence of the Division of Purchasing, these combinations may also include items, such as personal property or installed function equipment, which are funded from operating budget appropriations.

(B) Budget Language. Budget items submitted to the legislature for review in the appropriation process have defined scope and purpose. Absent specific definitions of scope in the appropriation, the scope identified in the budget items will be used to establish project limits. Construction or maintenance/repair projects may not include items of work which are not a part of the approved scope.

(3) Project Fund Allocation. Expenditure limitations and fund sources are established by the language of the appropriations and the budget.

(A) Appropriation Language. The appropriation language establishes the fund source (appropriation, donation, grant, etc.) and the expenditure limitations for a program, project or work item as defined in the appropriation.

Expenditures must remain within the limitations specified in the appropriations.

(B) Budget Item Cost Estimates. Absent contrary appropriation language, the cost estimates presented to the legislature in the budget will be used to define expenditure limitations for individual budget items. Expenditures shall not be made for work not included in the approved scope of work.

1. Limitations. Total expenditure for a project defined in a single budget item shall not exceed the limitation defined in the appropriation or the budget item. Within the limitations established for an item in the appropriation and/or estimated cost in the budget, reasonable variations in cost for individual subitems (as indicated in the budget) will be permitted. Reasonable variations in cost for individual site/complexes (as indicated in the budget) will be permitted where several site/complexes are involved in a single budget item.

2. Elimination of subitems. Subitems or site/complexes included in a budget item will not be eliminated unless the scope and/or expenditure limitations for the budget item are reduced in the appropriation. Appropriation language will be examined to determine whether funding for specific subitems or site/complexes was denied or eliminated. Absent specific denials or exclusions in an appropriation which reduces funding requested in the budget submitted to the legislature, lesser priority subitems or site/complexes may be eliminated to bring the budget item within the expenditure limitations of appropriations.

3. Combination of appropriation items. Funding authorized by several appropriation items may be combined to fund a single project when the director determines that this combination may be in the best interest of the state. These combinations may be considered for similar work at several locations within a single department or for various items of work at a single location. The scope of work for this project and the items so combined shall remain within the total of the authorizations of the several appropriations. The director shall carefully examine the appropriation language to determine that the total of the funding for the combined project is within the total of the funding authorized by the appropriations. The director shall insure that the funding or expenditure from any appropriation item does not exceed the amount authorized by that appropriation item.

(C) Projects Involving Nonappropriated Funds. Fund allocation for projects involving appropriations by the general assembly and nonappropriated funds will be established in the initial coordination and specifically

defined in the agreement between the state and the donor or grantor. This agreement will also establish the method for control and release of donated or grant funding to include final payment. The agreement and any subsequent changes shall be approved by the commissioner of administration or his/her designee.

(4) Exemptions. There are specific exemptions from requirements of this rule provided by the *Missouri Constitution* of 1945 and by statute.

(A) Department of Highways and 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 from provisions of this rule which require coordination with, or approval by, the commissioner of administration, Division of Design and Construction or both for defining projects, determining fund allocation or for approval of contracts or payments.

(5) This rule becomes effective with appropriations for Fiscal Year 1983.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. 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.*

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

1 CSR 30-3.030 Project Design

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

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Selection of Designer. Selection of an agency or consultant firm for design of pro-

jects in the Capital Improvement Maintenance Program will be made within seventy-five (75) calendar days after the appropriations are passed and signed. Department/agencies are encouraged to make recommendations for selection of designers for projects included in their program. These recommendations shall be forwarded to the director within seven (7) calendar days after completion of initial coordination.

(A) Design by Department/Agency. The department/agency may recommend in-house design for those projects within their capability and capacity. 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 Design and Construction. The director shall examine projects remaining after selections for in-house department/agency design. Those projects for which the Division of 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 Missouri to provide the greatest possible opportunity for qualified and competent consultants to participate in this program. The director shall maintain a file 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.

1. Department/agencies may make recommendations for selections of consultants for design of projects not selected for in-house design. Recommendation of consultants will be based on knowledge of, or experience with, these consultants on current or prior projects. Recommendations shall address, when appropriate, the need for special expertise or continuity between current and previous or proposed future work. The recommendations also shall indicate projects for which the department/agency cannot provide knowledgeable recommendations.

2. The director, Division of Design and Construction, acting as consultant for department/agencies, will select consultants for projects in the Capital Improvement and Maintenance Program after giving careful consideration to recommendations by the client department/agencies. Selection of con-

sultant firms will be made 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. Primary 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 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 methods. 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. When the director is authorized to approve payments for a department/agency, copies of each payment will be forwarded to the appropriate department/agency.

D. Communications. All official communication and direction to the consultant shall be issued by the director or his/her designee. This will not limit informal communication or coordination between consultants and department/agencies. All conflicts between the consultant and a department/agency shall be resolved by decision of the director.

2. Department/agency. The program manager shall be responsible for internal

department/agency coordination and approval within guidance established by the policies of the department/agency.

A. Encumbrance of design funding. When the contract for design is signed by the department/agency, it will be returned to the director along with the encumbrance for the amount of the contract. The department/agency also may provide authorization for the director to approve expenditures within the amount of the encumbrance.

B. Communication. Official communication concerning projects and studies will be between the department/agency and the Division of Design and Construction. The department/agency and particularly the using element can make a valuable contribution to understanding requirements and problems for the project. Informal communication and working conferences between the department/agency/site personnel and the consultant are essential to successful completion of a project. Knowledgeable personnel from the department/agency, site/complex or both 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 administration 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. Review, approval and administrative processing shall then be completed within fifteen (15) working days after resolution of these differences.

(3) Design Review. Designs and/or studies will be submitted to the director 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 in the Division of 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. Comments by the department/agency, if any, will be forwarded to the Division of Design and Construction 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 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 commissioner of administration or his/her designee.

(A) Predesign Conference. A predesign conference will be scheduled by the project manager with the designer and the program manager 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 predesign 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 director, 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 functional element that will occupy or use the completed project. Comments and/or recommendations of this functional element will be forwarded simultaneously to the Division of Design and Construction and the department/agency within five (5) working days after receipt by the functional element. Comments by the department/agency will also be forwarded to the Division of 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 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 functional element that will occupy or use the completed project. Comments and/or recommendations of this functional element will be forwarded simultaneously to the Division of Design and Construction and the department/agency within five (5) working days after receipt by the functional element. Comments and/or recommendations of the department/agency also shall be forwarded to the Division of 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 for consideration.

3. Construction documents. The final review submission will be 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 Design and Construction.

(C) Consultations. The designer of a project retains an interest in the project even after completion of the designer's contract obligation. The designer shall provide follow-on consultations for the purpose of clarifying design concepts or interpretations during the construction phase of a project and for initial coordination of a succeeding project at the same facility. Those consultations will be limited to necessary clarifications, recommendations or both concerning the concept, development and utilization of the designer's project.

(D) Codes and Standards. The following are adopted as the codes and standards for work under the Capital Improvement and Maintenance Program (The director is the authority for determining exceptions or resolving conflicts.):

1. BOCA* *Basic Building Code* (current edition);
2. BOCA *Basic Mechanical Code* (current edition);
3. BOCA *Basic Plumbing Code* (current edition);
4. NFPA** *National Electric Code* (current edition);
5. NFPA *Life Safety Code* (current edition); and
6. 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 director. Missouri and its contractors are exempt from paying license, inspection or similar fees for work on state premises.

*Building Officials and Code Administrators, International
 **National Fire Protection Association

(4) 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 Tabulation. The designer shall furnish bid tabulation forms specifically prepared for each project. This tabulation shall be approved by the director or his/her designee.

(C) Bid Review and Recommendations. The project manager shall notify the designer and the program manager of the department/agency concerned of scheduled project bid dates. Immediately following the opening of bids for a project, the project manager shall coordinate a review of the bids with the program 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.

(5) 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.

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

(A) Department of Highways and 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 from provisions of this rule which require coordination with or approval by the commissioner of administration and/or Division of Design and Construction for defining projects, determining fund allocation, negotiation or approval of contracts and approval of payments.

(7) This rule becomes effective with appropriations for Fiscal Year 1983.

*AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. * 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.*

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

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 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 ten thousand dollars (\$10,000). Contracts costing more than ten thousand dollars (\$10,000) will have solicitation advertised in accordance with section 8.250, RSMo. In addition, when appropriate, individual firms shall be contacted to determine their interest and/or solicit their interest.

2. Projects costing ten thousand dollars (\$10,000) or less. Projects costing ten thousand dollars (\$10,000) 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 nonappropriated 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 ten thousand dollars (\$10,000) require approval of the director. Requests shall include scope, source of funding and, when appropriate, drawings, specifications and proposal forms.

(B) Prebid Conference. When appropriate, a prebid 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 prebid 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 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 to determine the lowest responsive, responsible proposal within 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 ten thousand dollars (\$10,000) 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 lowest responsive, responsible bidder within the available appropriations.

(B) Contract Documents. Contract documents normally shall include, 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.

(C) Approval and Signature. All contracts for work under this program, except projects supervised by the Board of Public Buildings, shall be approved by the commissioner of administration or his/her designee and shall not be binding on Missouri until so approved. Contracts for projects under the supervision of the Board of Public Buildings shall be approved and designed by at least two (2) members of that board. Submission and approval of an encumbrance in the contract amount shall proceed concurrently with the approval and signature for contracts.

(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 that the notice of award is issued to the contractor establishes the start of the time for completion stated in the contract.

(3) Project Supervision. The director, as consultant 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 construction inspector

and the designer in observing the work, equipment and materials on the site. Unusual occurrences or apparent problems will be reported to the construction inspector at the earliest opportunity.

(B) Division of Design and Construction. For each project in the program, the director shall designate a construction inspector to be the director's on-site representative. The construction inspector(s) shall have responsibility for supervision and administration of the contract(s) on the project(s). The construction inspector 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; and

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

(C) Designer. The designer, when construction administration is included in his/her 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 construction 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. Superintendence on the project site at all times when work is in progress. This superintendence shall include 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 superintendence;

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 his/her 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; and

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.

(E) Preconstruction Conference. The construction inspector 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 construction inspector for any requirements or conditions requiring special attention.

(F) Construction Progress Meetings. The construction inspector periodically shall 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) Change Orders. Change order work shall be approved only when the director determines that it would be detrimental to bid the work separately. If possible pricing for change orders will be determined from unit prices stated in, or derived from, the con-

tractor's original bid proposal. Change orders shall not be used to expand the scope of work beyond the intent of the appropriation. Change orders 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 construction inspector and the department/agency and then prepare the change order, including appropriate drawings and specifications. After review and approval of the contractor's proposal the designer shall furnish the change order and proposal to the construction inspector for his/her recommendation and forwarding to the director. Submission and approval of an encumbrance in the amount of the change order shall proceed concurrently with approval and signature for the change order. Notice to proceed with work under a change order 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 construction inspector and designer are for assistance and shall not be used as a substitute for the contractor's required superintendence of the work.

1. Prefinal inspection. When the contractor has substantially completed the work, s/he shall notify the construction inspector requesting a prefinal inspection and provide a complete list of all items remaining to be completed. The construction 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 prefinal inspection. Representatives of the department/agency using element, and when appropriate, the grantor or donor of support funding shall be invited to participate in the final inspection along with the construction 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 inspection. All items of equipment, materials and work are guaranteed or warranted for at least one (1) year after final acceptance. During the tenth or eleventh month following completion, the designer shall schedule a meeting at the project site with the contractor, a representative of the department/agency/site and a representative of the director. Performance of items under guaranty or warranty will be examined to assure that they are 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 statute.

(A) Department of Highways and 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 Design and Construction, or both, for soliciting and receipt of proposals, award of and payments for contracts and contract supervision.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986 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.*

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

1 CSR 30-3.050 Project Payments, Acceptance and Occupancy

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

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 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 expeditiously transmitted to the department/agency. Signature for the department/agency and return to the Division of Design and Construction shall be accomplished by the department/agency within five (5) working days after receipt of the payment request.

(A) Projects Costing Five Thousand Dollars (\$5000) or more. Payment for labor and material on projects costing five thousand dollars (\$5000) or more shall be made in accordance with section 8.260, RSMo. Requests for payments shall be submitted in the form and be supported by a 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 Five Thousand Dollars (\$5000). Payment for labor and materials on projects costing less than five thousand dollars (\$5000) shall be made

in accordance with section 8.270, RSMo. Requests for payment shall be submitted in the form and be supported by documentation as may be 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 contract manager. The contractor shall provide releases from all subcontractors and suppliers evidencing that they have been paid in full. After review and approval of the requests for payment, reports, records and other documentation by the director, 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 Nonappropriated 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.

(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 shall issue the contractor a letter accepting the projects. A copy of that letter also shall be furnished to the department/agency concerned.

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

(C) Project Records. The construction manager shall deliver one (1) copy of all project records 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 Highways and 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 Design and Construction for approval of payments.

(4) This rule becomes effective with the appropriation for Fiscal Year 1983.

*AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. *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.*

**Original authority: 8.310, RSMo 1958, amended 1965, 1984, 1987 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) Person. A person is any individual, corporation, partnership, association or legal entity, however organized.

(D) Principal. A principal is an officer, director, owner, partner, key employee or other person within a bidder with primary management or supervisory responsibilities.

(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 nonresponsibility 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, his/her financial condition, his/her ability to prosecute the work as bid and the quality of his/her work, including project superintendence and management, on previous projects for the Division of 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 contract again.

(C) Upon receipt of notice of ineligibility, the bidder may request a hearing in front of the director or his/her designee. The hearing shall be informally conducted and shall provide the bidder or his/her 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 his/her final 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 final 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 contract. The final determination may affirm, reverse or modify the preliminary determination.

(4) Ineligibility. During the period of his/her ineligibility a bidder may not participate in any contract with the Division of 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 for future contracts.

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

(C) A determination of ineligibility shall 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 make the required showing, s/he shall continue to be ineligible until the required information is provided.

(5) Appeal. An ineligibility determination of the director shall be final. However, the bidder may request that the determination be reviewed by the commissioner of administration or his/her 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.

*AUTHORITY: section 8.320, RSMo 1986. *Original rule filed July 14, 1989, effective Oct. 16, 1989. *Original authority 1958, amended 1965.*

Original authority 1958, amended 1965.