

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 359
95TH GENERAL ASSEMBLY

Reported from the Committee on Transportation, April 9, 2009, with recommendation that the Senate Committee Substitute do pass.

1170S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to state highways and transportation commission design-build highway project contracts, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows:

227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state highways and transportation commission is authorized to enter into highway design-build project contracts. [The authority granted to the state highways and transportation commission by this section shall be limited to a total of three design-build project contracts. Two design-build projects authorized by this section shall be selected by the highways and transportation commission from 1992 fifteen year plan projects.] **The total number of highway design-build project contracts awarded by the commission in any state fiscal year shall not exceed two percent of the total number of all state highway system projects listed in the commission's approved statewide transportation improvement project for that state fiscal year.** Authority to enter into design-build projects granted by this section shall expire on July 1, 2012, unless extended by statute [or upon completion of three projects, whichever is first].

2. For the purpose of this section a "design-builder" is defined as an

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 individual, corporation, partnership, joint venture or other entity, including
18 combinations of such entities making a proposal to perform or performing a
19 design-build highway project contract.

20 3. For the purpose of this section, "design-build highway project contract"
21 is defined as the procurement of all materials and services necessary for the
22 design, construction, reconstruction or improvement of a state highway project in
23 a single contract with a design-builder capable of providing the necessary
24 materials and services.

25 4. For the purpose of this section, "highway project" is defined as the
26 design, construction, reconstruction or improvement of highways or bridges under
27 contract with the state highways and transportation commission, which is funded
28 by state, federal or local funds or any combination of such funds.

29 5. In using a design-build highway project contract, the commission shall
30 establish a written procedure by rule for prequalifying design-builders before
31 such design-builders will be allowed to make a proposal on the project.

32 6. In any design-build highway project contract, whether involving state
33 or federal funds, the commission shall require that each person submitting a
34 request for qualifications provide a detailed disadvantaged business enterprise
35 participation plan. The plan shall provide information describing the experience
36 of the person in meeting disadvantaged business enterprise participation goals,
37 how the person will meet the department of transportation's disadvantaged
38 business enterprise participation goal and such other qualifications that the
39 commission considers to be in the best interest of the state.

40 7. The commission is authorized to issue a request for proposals to a
41 maximum of five design-builders prequalified in accordance with subsection 5 of
42 this section.

43 8. The commission may require approval of any person performing
44 subcontract work on the design-build highway project.

45 [9. The bid bond and performance bond requirements of section 227.100
46 and the payment bond requirements of section 107.170, RSMo, shall apply to the
47 design-build highway project.

48 10. The requirements of subsection 9 of this section may be modified by
49 the commission for any design-build highway project contract which is designated
50 by the commission as a "design-build-finance-maintain" project, and for which the
51 contract with the design-builder exceeds twenty-five years. For such
52 projects,] **9. Notwithstanding the provisions of sections 107.170, RSMo,**

53 **and 227.100, to the contrary**, the commission shall require the design-builder
54 to provide[, or cause to be provided by the construction entity or entities
55 providing construction services under contract] to the [design-builder]
56 **commission** directly, such **bid, performance, and payment** bonds, or such
57 [other security] **letters of credit**, in such terms, durations, [and] amounts, **and**
58 **on such forms** as the commission may determine to be adequate for its
59 protection and provided by a surety[, sureties, or financial institution or
60 institutions satisfactory to the commission] **or sureties authorized to conduct**
61 **surety business in the state of Missouri or a federally insured financial**
62 **institution or institutions**, including but not limited to:

63 (1) A bid or proposal bond, [or other security authorized under subsection
64 2 of section 227.100, in an amount of not less than five million dollars] **cash or**
65 **a certified or cashier's check**;

66 (2) A performance bond or bonds for the construction period specified in
67 the design-build highway project contract [in an aggregate amount of not less
68 than two hundred million dollars or twenty-five percent of a reasonable estimate
69 of the cost of construction work, whichever amount is lower, except the
70 commission may allow other security in lieu of or in addition to any bond or
71 bonds, including but not limited to letters of credit or other negotiable
72 instruments, such other or additional security to be on such terms, for such
73 durations, and in such amounts as the commission may determine to be adequate
74 for the protection of the commission, and to be provided by sureties or financial
75 institutions satisfactory to the commission] **equal to a reasonable estimate**
76 **of the total cost of construction work under the terms of the design-**
77 **build highway project contract. If the commission determines in**
78 **writing supported by specific findings that the reasonable estimate of**
79 **the total cost of construction work under the terms of the design-build**
80 **highway project contract is expected to exceed two-hundred and fifty**
81 **million dollars and a performance bond or bonds in such amount is**
82 **impractical, the commission shall set the performance bond or bonds**
83 **at the largest amount reasonably available, but not less than two-**
84 **hundred and fifty million dollars, and may require additional security,**
85 **including but not limited to letters of credit, for the balance of the**
86 **estimate not covered by the performance bond or bonds; [and]**

87 (3) A payment bond or bonds that shall be enforceable under section
88 522.300, RSMo, for the protection of persons supplying labor and material in

89 carrying out the construction work provided for in the design-build highway
90 project contract. The aggregate amount of the payment bond or bonds shall equal
91 a reasonable estimate of the total amount payable for the cost of construction
92 work under the terms of the design-build highway project contract unless the
93 commission determines in writing supported by specific findings that a payment
94 bond or bonds in such amount is impractical, in which case the commission shall
95 establish the amount of the payment bond or bonds; except that the amount of the
96 payment bond or bonds shall not be less than the aggregate amount of the
97 performance bond or bonds and [the] **any** additional security to such performance
98 bond or bonds[, or in the amount of the other security used in lieu of the
99 performance bond or bonds]; **and**

100 **(4) Upon award of the design-build highway project contract, the**
101 **sum of the performance bond and any required additional security**
102 **established under subdivisions (2) and (3) of this subsection shall be**
103 **stated, and shall be a matter of public record.**

104 [11.] **10.** The commission is authorized to prescribe the form of the
105 contracts for the work.

106 [12.] **11.** The commission is empowered to make all final decisions
107 concerning the performance of the work under the design-build highway project
108 contract, including claims for additional time and compensation.

109 [13.] **12.** The provisions of sections 8.285 to 8.291, RSMo, shall not apply
110 to the procurement of architectural, engineering or land surveying services for the
111 design-build highway project, except that any person providing architectural,
112 engineering or land surveying services for the design-builder on the design-build
113 highway project must be licensed in Missouri to provide such services.

114 [14.] **13.** The commission shall pay a reasonable stipend to prequalified
115 responsive design-builders who submit a proposal, but are not awarded the
116 design-build highway project.

117 [15.] **14.** The commission shall comply with the provisions of any act of
118 congress or any regulations of any federal administrative agency which provides
119 and authorizes the use of federal funds for highway projects using the
120 design-build process.

121 [16.] **15.** The commission shall promulgate administrative rules to
122 implement this section or to secure federal funds. Such rules shall be published
123 for comment in the Missouri Register and shall include prequalification criteria,
124 the make-up of the prequalification review team, specifications for the design

125 criteria package, the method of advertising, receiving and evaluating proposals
126 from design-builders, the criteria for awarding the design-build highway project
127 based on the design criteria package and a separate proposal stating the cost of
128 construction, and other methods, procedures and criteria necessary to administer
129 this section.

130 **[17.] 16.** The commission shall make a status report to the members of
131 the general assembly and the governor following the award of the design-build
132 project, as an individual component of the annual report submitted by the
133 commission to the joint transportation oversight committee in accordance with the
134 provisions of section 21.795, RSMo. The annual report prior to advertisement of
135 the design-build highway project contracts shall state the goals of the project in
136 reducing costs and/or the time of completion for the project in comparison to the
137 design-bid-build method of construction and objective measurements to be utilized
138 in determining achievement of such goals. Subsequent annual reports shall
139 include: the time estimated for design and construction of different phases or
140 segments of the project and the actual time required to complete such work
141 during the period; the amount of each progress payment to the design-builder
142 during the period and the percentage and a description of the portion of the
143 project completed regarding such payment; the number and a description of
144 design change orders issued during the period and the cost of each such change
145 order; upon substantial and final completion, the total cost of the design-build
146 highway project with a breakdown of costs for design and construction; and such
147 other measurements as specified by rule. The annual report immediately after
148 final completion of the project shall state an assessment of the advantages and
149 disadvantages of the design-build method of contracting for highway and bridge
150 projects in comparison to the design-bid-build method of contracting and an
151 assessment of whether the goals of the project in reducing costs and/or the time
152 of completion of the project were met.

153 **[18.] 17.** The commission shall give public notice of a request for
154 qualifications in at least two public newspapers that are distributed wholly or in
155 part in this state and at least one construction industry trade publication that is
156 distributed nationally.

157 **[19.] 18.** The commission shall publish its cost estimates of the
158 design-build highway project award and the project completion date along with
159 its public notice of a request for qualifications of the design-build project.

160 **[20.] 19.** If the commission fails to receive at least two responsive

161 submissions from design-builders considered qualified, submissions shall not be
162 opened and it shall readvertise the project.

163 **20. Nothing in this section shall affect the existing rights of**
164 **property owners whose property interests are affected by any highway**
165 **design-build project constructed under this section.**

166 **21. For any highway design-build project constructed under this**
167 **section, the commission shall negotiate and reach agreements with**
168 **affected railroads. Such agreements shall include clearance, safety,**
169 **insurance, and indemnification provisions, but are not required to**
170 **include provisions on right of way acquisitions.**

Section B. Because Congress is considering enactment of an economic
2 stimulus bill that appropriates additional federal-aid highway funds to all states,
3 including Missouri, which must be committed for additional state highway system
4 projects within the expedited time frame specified in the economic stimulus bill,
5 immediate action is necessary to ensure that the state of Missouri, through the
6 Missouri highways and transportation commission, has design-build authority to
7 meet the highway project construction start date requirements, section A of this
8 act is deemed necessary for the immediate preservation of the public health,
9 welfare, peace and safety, and is hereby declared to be an emergency act within
10 the meaning of the constitution, and section A of this act shall be in full force and
11 effect upon its passage and approval.

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