

SECOND REGULAR SESSION

SENATE BILL NO. 970

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS WESTFALL, GOODE, RUSSELL, CAUTHORN AND KLINDT.

Read 1st time January 17, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3307S.04I

AN ACT

To repeal sections 142.803 and 227.100, RSMo, relating to transportation, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Sections 142.803 and 227.100, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 142.803, 227.100 and 227.107, to read as follows:

142.803. 1. A tax is levied and imposed on all motor fuel used or consumed in this state as follows:

(1) Motor fuel, seventeen cents per gallon[. Beginning April 1, 2008, the tax rate shall become eleven cents per gallon];

(2) Alternative fuels, not subject to the decal fees as provided in section 142.869, with a power potential equivalent of motor fuel. In the event alternative fuel, which is not commonly sold or measured by the gallon, is used in motor vehicles on the highways of this state, the director is authorized to assess and collect a tax upon such alternative fuel measured by the nearest power potential equivalent to that of one gallon of regular grade gasoline. The determination by the director of the power potential equivalent of such alternative fuel shall be prima facie correct;

(3) Aviation fuel used in propelling aircraft with reciprocating engines, nine cents per gallon as levied and imposed by section 155.080, RSMo, to be collected as required under this chapter.

2. All taxes, surcharges and fees are imposed upon the ultimate consumer, but are to be precollected as described in this chapter, for the facility and convenience of the consumer. The

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

levy and assessment on other persons as specified in this chapter shall be as agents of this state for the precollection of the tax.

227.100. 1. All contracts for the construction of said work shall be let to the lowest responsible bidder or bidders after notice and publication of an advertisement in a newspaper published in the county where the work is to be done, and in such other publications as the commission may determine[; provided, that in all cases where the project advertised shall be for the construction of more than ten miles of road, such advertisement shall provide for bids on sections of said road not to exceed ten miles, as well as on the project as a whole, and such contract shall then be let so as to provide for the most economical construction of said project].

2. Each bid shall be accompanied by a certified check or a cashier's check or a bid bond, guaranteed by a surety company authorized by the director of the department of insurance to conduct surety business in the state of Missouri, equal to five percent of the bid, which certified check, cashier's check, or bid bond shall be deposited with the commissioner as a guaranty and forfeited to the state treasurer to the credit of the state road fund in the event the successful bidder fails to comply with the terms of the proposal, and return to the successful bidder on execution and delivery of the performance bond provided for in subsection 4. The checks of the unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.

3. All notices of the letting of contracts under this section shall state the time and place when and where bids will be received and opened, and all bids shall be sealed and opened only at the time and place mentioned in such notice and in the presence of some member of the commission or some person named by the commission for such purpose.

4. The successful bidders for the construction of said work shall enter into contracts furnished and prescribed by the commission and shall give good and sufficient bond, in a sum equal to the contract price, to the state of Missouri, with sureties approved by the commission and to ensure the proper and prompt completion of said work in accordance with the provisions of said contracts, and plans and specifications; provided, that if, in the opinion of the majority of the members of the commission, the lowest bid or bids for the construction of any of the roads, or parts of roads, herein authorized to be constructed, shall be excessive, then, and in that event, said commission shall have the right, and it is hereby empowered and authorized to reject any or all bids, and to construct, under its own direction and supervision, all of such roads and bridges, or any part thereof.

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 one interstate national highway design-build pilot project contract and two state highway design-build pilot project contracts within ten years of the effective date of this section. Authority for design-build authorized by this section shall expire upon

completion of the project selected, unless reauthorized by law.

2. For the purpose of this section a "design-builder" is defined as an individual, corporation, partnership, joint venture or other entity, including combinations of such entities making a proposal to perform or performing a design-build highway project contract.

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

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

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

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

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

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

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

10. The commission is authorized to prescribe the form of the contracts for the work.

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

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

13. The commission shall pay a reasonable stipend to prequalified responsive design-builders who submit a proposal, but are not awarded the design-build highway project.

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

15. The commission shall promulgate administrative rules to implement this section or to secure federal funds. Such rules shall be published for comment in the Missouri Register and shall include prequalification criteria, the make-up of the prequalification review team, specifications for the design criteria package, the method of advertising, receiving and evaluating proposals from design-builders, the criteria for awarding the design-build highway project based on the design criteria package and a separate proposal stating the cost of construction, and other methods, procedures and criteria necessary to administer this section.

16. The commission shall make a status report to the members of the general assembly and the governor following the award of the design-build project, as an individual component of the annual report submitted by the commission to the joint transportation oversight committee in accordance with the provisions of section 21.795, RSMo. The annual report prior to advertisement of the design-build highway project contracts shall state the goals of the project in reducing costs and/or the time of completion for the project in comparison to the design-bid-build method of construction and objective measurements to be utilized in determining achievement of such goals. Subsequent annual reports shall include: the time estimated for design and construction of different phases or segments of the project and the actual time required to complete such work during the period; the amount of each progress payment to the design builder during the period and the percentage and a description of the portion of the project completed regarding such payment; the number and a description of design change orders issued during the period and the cost of each such change order; upon substantial and final completion, the total cost of the design-build highway project with a breakdown of costs for design and construction; and such other measurements as specified by rule. The annual report immediately after final completion of the project shall state an assessment of the advantages and

disadvantages of the design-build method of contracting for highway and bridge projects in comparison to the design-bid-build method of contracting and an assessment of whether the goals of the project in reducing costs and/or the time of completion of the project were met.

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

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

19. If the commission fails to receive at least two responsive submissions from design-builders considered qualified, submissions shall not be opened and it shall readvertise the project.

20. The provisions of this section which are applicable to one interstate national pilot highway project shall apply to an interstate highway which runs through a county of the first classification with a charter form of government having a population greater than one million inhabitants and a city not within a county. The interstate national pilot highway project shall have a total maximum annual expenditure of one hundred twenty-five million dollars for the life of the design-build project.

21. One of the state highway design-build projects authorized by this section shall apply to a state highway which runs from a county of the third classification without a township form of government having a population of at least fifteen thousand seven hundred fifty inhabitants but less than fifteen thousand eight hundred inhabitants to a county of the third classification without a township form of government having a population with at least twenty-eight thousand two hundred inhabitants but less than twenty-eight thousand three hundred inhabitants.

22. One of the state highway design-build projects authorized by this section shall apply to a state highway which runs through a county of the third classification without a township form of government having a population of more than twenty-two thousand five hundred inhabitants but less than thirty-two thousand six hundred inhabitants and a county of the first classification without a charter form of government having a population of at least thirty-seven thousand but less than thirty-seven thousand one hundred inhabitants.