

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 133
96TH GENERAL ASSEMBLY

Reported from the Committee on Transportation, February 24, 2011, with recommendation that the Senate Committee Substitute do pass.

0709S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to highway design-build project contracts.

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Section A. Section 227.107, RSMo, is repealed and one new section
2 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
2 contrary, as an alternative to the requirements and procedures specified by
3 sections 227.040 to 227.100, the state highways and transportation commission
4 is authorized to enter into highway design-build project contracts. The total
5 number of highway design-build project contracts awarded by the commission in
6 any state fiscal year shall not exceed two percent of the total number of all state
7 highway system projects listed in the commission's approved statewide
8 transportation improvement project for that state fiscal year. Authority to enter
9 into design-build projects granted by this section shall expire on July 1, [2012]
10 **2018**, unless extended by statute.

11 2. Notwithstanding provisions of subsection 1 of this section to the
12 contrary, the state highways and transportation commission is authorized to
13 enter into additional design-build contracts for the design, construction,
14 reconstruction, or improvement of Missouri Route 364 as contained in any county
15 with a charter form of government and with more than two hundred fifty
16 thousand but fewer than three hundred fifty thousand inhabitants and in any
17 county with a charter form of government and with more than one million
18 inhabitants, and the State Highway 169 and 96th Street intersection located

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

19 within a home rule city with more than four hundred thousand inhabitants and
20 located in more than one county. The state highways and transportation
21 commission is authorized to enter into an additional design-build contract for the
22 design, construction, reconstruction, or improvement of State Highway 92,
23 contained in a county of the first classification with more than one hundred
24 eighty-four thousand but fewer than one hundred eighty-eight thousand
25 inhabitants, from its intersection with State Highway 169, east to its intersection
26 with State Highway E. **The state highways and transportation commission**
27 **is authorized to enter into an additional design-build contract for the**
28 **design, construction, reconstruction, or improvement of US 40/61 I-64**
29 **Missouri River Bridge as contained in any county with a charter form**
30 **of government and with more than one million inhabitants and any**
31 **county with a charter form of government and with more than two**
32 **hundred fifty thousand but fewer than three hundred fifty thousand**
33 **inhabitants.** The authority to enter into a design-build highway project under
34 this subsection shall not be subject to the time limitation expressed in subsection
35 1 of this section.

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

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

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

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

52 7. In any design-build highway project contract, whether involving state
53 or federal funds, the commission shall require that each person submitting a
54 request for qualifications provide a detailed disadvantaged business enterprise

55 participation plan. The plan shall provide information describing the experience
56 of the person in meeting disadvantaged business enterprise participation goals,
57 how the person will meet the department of transportation's disadvantaged
58 business enterprise participation goal and such other qualifications that the
59 commission considers to be in the best interest of the state.

60 8. The commission is authorized to issue a request for proposals to a
61 maximum of five design-builders prequalified in accordance with subsection 6 of
62 this section.

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

65 10. Notwithstanding the provisions of sections 107.170, and 227.100, to
66 the contrary, the commission shall require the design-builder to provide to the
67 commission directly such bid, performance and payment bonds, or such letters of
68 credit, in such terms, durations, amounts, and on such forms as the commission
69 may determine to be adequate for its protection and provided by a surety or
70 sureties authorized to conduct surety business in the state of Missouri or a
71 federally insured financial institution or institutions, satisfactory to the
72 commission, including but not limited to:

73 (1) A bid or proposal bond, cash or a certified or cashier's check;

74 (2) A performance bond or bonds for the construction period specified in
75 the design-build highway project contract equal to a reasonable estimate of the
76 total cost of construction work under the terms of the design-build highway
77 project contract. If the commission determines in writing supported by specific
78 findings that the reasonable estimate of the total cost of construction work under
79 the terms of the design-build highway project contract is expected to exceed
80 two-hundred fifty million dollars and a performance bond or bonds in such
81 amount is impractical, the commission shall set the performance bond or bonds
82 at the largest amount reasonably available, but not less than two-hundred fifty
83 million dollars, and may require additional security, including but not limited to
84 letters of credit, for the balance of the estimate not covered by the performance
85 bond or bonds;

86 (3) A payment bond or bonds that shall be enforceable under section
87 522.300 for the protection of persons supplying labor and material in carrying out
88 the construction work provided for in the design-build highway project
89 contract. The aggregate amount of the payment bond or bonds shall equal a
90 reasonable estimate of the total amount payable for the cost of construction work

91 under the terms of the design-build highway project contract unless the
92 commission determines in writing supported by specific findings that a payment
93 bond or bonds in such amount is impractical, in which case the commission shall
94 establish the amount of the payment bond or bonds; except that the amount of the
95 payment bond or bonds shall not be less than the aggregate amount of the
96 performance bond or bonds and any additional security to such performance bond
97 or bonds; and

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

102 11. The commission is authorized to prescribe the form of the contracts
103 for the work.

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

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

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

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

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

127 this section.

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

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

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

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

161 21. For any highway design-build project constructed under this section,
162 the commission shall negotiate and reach agreements with affected

163 railroads. Such agreements shall include clearance, safety, insurance, and
164 indemnification provisions, but are not required to include provisions on
165 right-of-way acquisitions.

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