

FIRST REGULAR SESSION

SENATE BILL NO. 378

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Read 1st time February 28, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1715S.011

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Section A. Section 227.107, RSMo, is repealed and one new section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
19 within a home rule city with more than four hundred thousand inhabitants and

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

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 authority to enter into a design-build highway project
27 under this subsection shall not be subject to the time limitation expressed in
28 subsection 1 of this section.

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

33 [4.] 3. For the purpose of this section, "design-build highway project
34 contract" is defined as the procurement of all materials and services necessary for
35 the design, construction, reconstruction or improvement of a state highway project
36 in a single contract with a design-builder capable of providing the necessary
37 materials and services.

38 [5.] 4. For the purpose of this section, "highway project" is defined as the
39 design, construction, reconstruction or improvement of highways or bridges under
40 contract with the state highways and transportation commission, which is funded
41 by state, federal or local funds or any combination of such funds.

42 [6.] 5. In using a design-build highway project contract, the commission
43 shall establish a written procedure by rule for prequalifying design-builders
44 before such design-builders will be allowed to make a proposal on the project.

45 [7.] 6. In any design-build highway project contract, whether involving
46 state or federal funds, the commission shall require that each person submitting
47 a request for qualifications provide a detailed disadvantaged business enterprise
48 participation plan. The plan shall provide information describing the experience
49 of the person in meeting disadvantaged business enterprise participation goals,
50 how the person will meet the department of transportation's disadvantaged
51 business enterprise participation goal and such other qualifications that the
52 commission considers to be in the best interest of the state.

53 [8.] 7. The commission is authorized to issue a request for proposals to
54 a maximum of five design-builders prequalified in accordance with subsection [6]
55 5 of this section.

56 [9.] 8. The commission may require approval of any person performing
57 subcontract work on the design-build highway project.

58 [10.] 9. Notwithstanding the provisions of sections 107.170, and 227.100,
59 to the contrary, the commission shall require the design-builder to provide to the
60 commission directly such bid, performance and payment bonds, or such letters of
61 credit, in such terms, durations, amounts, and on such forms as the commission
62 may determine to be adequate for its protection and provided by a surety or
63 sureties authorized to conduct surety business in the state of Missouri or a
64 federally insured financial institution or institutions, satisfactory to the
65 commission, including but not limited to:

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

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

79 (3) A payment bond or bonds that shall be enforceable under section
80 522.300 for the protection of persons supplying labor and material in carrying out
81 the construction work provided for in the design-build highway project
82 contract. The aggregate amount of the payment bond or bonds shall equal a
83 reasonable estimate of the total amount payable for the cost of construction work
84 under the terms of the design-build highway project contract unless the
85 commission determines in writing supported by specific findings that a payment
86 bond or bonds in such amount is impractical, in which case the commission shall
87 establish the amount of the payment bond or bonds; except that the amount of the
88 payment bond or bonds shall not be less than the aggregate amount of the
89 performance bond or bonds and any additional security to such performance bond
90 or bonds; and

91 (4) Upon award of the design-build highway project contract, the sum of

92 the performance bond and any required additional security established under
93 subdivisions (2) and (3) of this subsection shall be stated, and shall be a matter
94 of public record.

95 [11.] 10. The commission is authorized to prescribe the form of the
96 contracts for the work.

97 [12.] 11. The commission is empowered to make all final decisions
98 concerning the performance of the work under the design-build highway project
99 contract, including claims for additional time and compensation.

100 [13.] 12. The provisions of sections 8.285 to 8.291 shall not apply to the
101 procurement of architectural, engineering or land surveying services for the
102 design-build highway project, except that any person providing architectural,
103 engineering or land surveying services for the design-builder on the design-build
104 highway project must be licensed in Missouri to provide such services.

105 [14.] 13. The commission shall pay a reasonable stipend to prequalified
106 responsive design-builders who submit a proposal, but are not awarded the
107 design-build highway project.

108 [15.] 14. The commission shall comply with the provisions of any act of
109 congress or any regulations of any federal administrative agency which provides
110 and authorizes the use of federal funds for highway projects using the
111 design-build process.

112 [16.] 15. The commission shall promulgate administrative rules to
113 implement this section or to secure federal funds. Such rules shall be published
114 for comment in the Missouri Register and shall include prequalification criteria,
115 the make-up of the prequalification review team, specifications for the design
116 criteria package, the method of advertising, receiving and evaluating proposals
117 from design-builders, the criteria for awarding the design-build highway project
118 based on the design criteria package and a separate proposal stating the cost of
119 construction, and other methods, procedures and criteria necessary to administer
120 this section.

121 [17.] 16. The commission shall make a status report to the members of
122 the general assembly and the governor following the award of the design-build
123 project, as an individual component of the annual report submitted by the
124 commission to the joint transportation oversight committee in accordance with the
125 provisions of section 21.795. The annual report prior to advertisement of the
126 design-build highway project contracts shall state the goals of the project in
127 reducing costs and/or the time of completion for the project in comparison to the

128 design-bid-build method of construction and objective measurements to be utilized
129 in determining achievement of such goals. Subsequent annual reports shall
130 include: the time estimated for design and construction of different phases or
131 segments of the project and the actual time required to complete such work
132 during the period; the amount of each progress payment to the design-builder
133 during the period and the percentage and a description of the portion of the
134 project completed regarding such payment; the number and a description of
135 design change orders issued during the period and the cost of each such change
136 order; upon substantial and final completion, the total cost of the design-build
137 highway project with a breakdown of costs for design and construction; and such
138 other measurements as specified by rule. The annual report immediately after
139 final completion of the project shall state an assessment of the advantages and
140 disadvantages of the design-build method of contracting for highway and bridge
141 projects in comparison to the design-bid-build method of contracting and an
142 assessment of whether the goals of the project in reducing costs and/or the time
143 of completion of the project were met.

144 [18.] 17. The commission shall give public notice of a request for
145 qualifications in at least two public newspapers that are distributed wholly or in
146 part in this state and at least one construction industry trade publication that is
147 distributed nationally.

148 [19.] 18. The commission shall publish its cost estimates of the
149 design-build highway project award and the project completion date along with
150 its public notice of a request for qualifications of the design-build project.

151 [20.] 19. If the commission fails to receive at least two responsive
152 submissions from design-builders considered qualified, submissions shall not be
153 opened and it shall readvertise the project.

154 [21.] 20. For any highway design-build project constructed under this
155 section, the commission shall negotiate and reach agreements with affected
156 railroads. Such agreements shall include clearance, safety, insurance, and
157 indemnification provisions, but are not required to include provisions on
158 right-of-way acquisitions.

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