

FIRST REGULAR SESSION

HOUSE BILL NO. 1241

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JONES.

1367H.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows: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 **that total less than fifty million dollars per individual project**. 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 awarded to contracts for construction from 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, 2018, unless extended by statute.

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

97 15. The commission shall comply with the provisions of any act of [congress] **Congress**
98 or any regulations of any federal administrative agency which provides and authorizes the use
99 of federal funds for highway projects using the design-build process.

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

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

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

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

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

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

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

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