

FIRST REGULAR SESSION

HOUSE BILL NO. 1309

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JONES.

2686H.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Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows: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 greater 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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