

FIRST EXTRAORDINARY SESSION
[TRULY AGREED TO AND FINALLY PASSED]

HOUSE BILL NO. 2

94TH GENERAL ASSEMBLY

2828L.01T

2007

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to state highways and transportation commission design-build state highway project bond requirements, with an emergency clause.

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Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows: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. The authority granted to the state highways and transportation commission by this section shall be limited to a total of three design-build project contracts. Two design-build projects authorized by this section shall be selected by the highways and transportation commission from 1992 fifteen year plan projects. Authority to enter into design-build projects granted by this section shall expire on July 1, 2012, unless extended by statute or upon completion of three projects, whichever is first.

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.

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.

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

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

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

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

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

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

37 **10. The requirements of subsection 9 of this section may be modified by the**
38 **commission for any design-build highway project contract which is designated by the**
39 **commission as a "design-build-finance-maintain" project, and for which the contract with**
40 **the design-builder exceeds twenty-five years. For such projects, the commission shall**
41 **require the design-builder to provide, or cause to be provided by the construction entity**
42 **or entities providing construction services under contract to the design-builder directly,**
43 **such bonds, or such other security, in such terms, durations, and amounts as the**
44 **commission may determine to be adequate for its protection and provided by a surety,**
45 **sureties, or financial institution or institutions satisfactory to the commission, including but**
46 **not limited to:**

47 **(1) A bid or proposal bond, or other security authorized under subsection 2 of**
48 **section 227.100, in an amount of not less than five million dollars;**

49 **(2) A performance bond or bonds for the construction period specified in the**
50 **design-build highway project contract in an aggregate amount of not less than two**
51 **hundred million dollars or twenty-five percent of a reasonable estimate of the cost of**
52 **construction work, whichever amount is lower, except the commission may allow other**
53 **security in lieu of or in addition to any bond or bonds, including but not limited to letters**

54 of credit or other negotiable instruments, such other or additional security to be on such
55 terms, for such durations, and in such amounts as the commission may determine to be
56 adequate for the protection of the commission, and to be provided by sureties or financial
57 institutions satisfactory to the commission; and

58 (3) A payment bond or bonds that shall be enforceable under section 522.300,
59 RSMo, for the protection of persons supplying labor and material in carrying out the
60 construction work provided for in the design-build highway project contract. The
61 aggregate amount of the payment bond or bonds shall equal a reasonable estimate of the
62 total amount payable for the cost of construction work under the terms of the design-build
63 highway project contract unless the commission determines in writing supported by
64 specific findings that a payment bond or bonds in such amount is impractical, in which
65 case the commission shall establish the amount of the payment bond or bonds; except that
66 the amount of the payment bond or bonds shall not be less than the aggregate amount of
67 the performance bond or bonds and the additional security to such performance bond or
68 bonds, or in the amount of the other security used in lieu of the performance bond or
69 bonds.

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

71 [11.] 12. The commission is empowered to make all final decisions concerning the
72 performance of the work under the design-build highway project contract, including claims for
73 additional time and compensation.

74 [12.] 13. The provisions of sections 8.285 to 8.291, RSMo, shall not apply to the
75 procurement of architectural, engineering or land surveying services for the design-build
76 highway project, except that any person providing architectural, engineering or land surveying
77 services for the design-builder on the design-build highway project must be licensed in Missouri
78 to provide such services.

79 [13.] 14. The commission shall pay a reasonable stipend to prequalified responsive
80 design-builders who submit a proposal, but are not awarded the design-build highway project.

81 [14.] 15. The commission shall comply with the provisions of any act of congress or any
82 regulations of any federal administrative agency which provides and authorizes the use of federal
83 funds for highway projects using the design-build process.

84 [15.] 16. The commission shall promulgate administrative rules to implement this
85 section or to secure federal funds. Such rules shall be published for comment in the Missouri
86 Register and shall include prequalification criteria, the make-up of the prequalification review
87 team, specifications for the design criteria package, the method of advertising, receiving and
88 evaluating proposals from design-builders, the criteria for awarding the design-build highway
89 project based on the design criteria package and a separate proposal stating the cost of
90 construction, and other methods, procedures and criteria necessary to administer this section.

91 [16.] **17.** The commission shall make a status report to the members of the general
92 assembly and the governor following the award of the design-build project, as an individual
93 component of the annual report submitted by the commission to the joint transportation oversight
94 committee in accordance with the provisions of section 21.795, RSMo. The annual report prior
95 to advertisement of the design-build highway project contracts shall state the goals of the project
96 in reducing costs and/or the time of completion for the project in comparison to the
97 design-bid-build method of construction and objective measurements to be utilized in
98 determining achievement of such goals. Subsequent annual reports shall include: the time
99 estimated for design and construction of different phases or segments of the project and the
100 actual time required to complete such work during the period; the amount of each progress
101 payment to the design-builder during the period and the percentage and a description of the
102 portion of the project completed regarding such payment; the number and a description of design
103 change orders issued during the period and the cost of each such change order; upon substantial
104 and final completion, the total cost of the design-build highway project with a breakdown of
105 costs for design and construction; and such other measurements as specified by rule. The annual
106 report immediately after final completion of the project shall state an assessment of the
107 advantages and disadvantages of the design-build method of contracting for highway and bridge
108 projects in comparison to the design- bid-build method of contracting and an assessment of
109 whether the goals of the project in reducing costs and/or the time of completion of the project
110 were met.

111 [17.] **18.** The commission shall give public notice of a request for qualifications in at
112 least two public newspapers that are distributed wholly or in part in this state and at least one
113 construction industry trade publication that is distributed nationally.

114 [18.] **19.** The commission shall publish its cost estimates of the design- build highway
115 project award and the project completion date along with its public notice of a request for
116 qualifications of the design-build project.

117 [19.] **20.** If the commission fails to receive at least two responsive submissions from
118 design-builders considered qualified, submissions shall not be opened and it shall readvertise the
119 project.

 Section B. Because immediate action is necessary to ensure public safety in the state,
2 section A of this act is deemed necessary for the immediate preservation of the public health,
3 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of
4 the constitution, and section A of this act shall be in full force and effect upon its passage and
5 approval.

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