

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

0709L.04C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal section 227.107, RSMo, and to enact in lieu thereof two new sections relating to design-build contracts.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 227.107, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 227.107 and 249.425, to read as follows: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 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 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, [2012] **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 commission is authorized to enter into an additional design-build contract for the design,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**249.425. 1. As used in this section, the following terms mean:**

2 (1) **"Design-build", a project for which the design and construction services are**  
3 **furnished under one contract;**

4 (2) **"Design-build contract", a contract between a sewer district and a design-build**  
5 **contractor to furnish the architecture, engineering, and related design services, and the**  
6 **labor, materials, and other construction services required for a specific construction**  
7 **project;**

8 (3) **"Design-build contractor", any individual, partnership, joint venture,**  
9 **corporation, or other legal entity that furnishes architecture or engineering services and**  
10 **construction services either directly or through subcontracts;**

11 (4) **"Design-build project", the design, construction, alteration, addition,**  
12 **remodeling, or improvement of any sewer district buildings or facilities under contract**  
13 **with a sewer district. Contracts for design-build projects that involve the construction,**  
14 **replacement or rehabilitation of a sewer district pump station or any other project that is**  
15 **located solely on sewer district property, such that in all cases, the project must exceed an**  
16 **expenditure of one million dollars. Design-build projects shall not include projects built**  
17 **on easements or rights-of-way dedicated to the sewer district involving open-cut sewer lines**  
18 **or rehabilitation of sewer district sewer lines;**

19 (5) **"Design criteria package", performance-oriented specifications for the**  
20 **design-build project sufficient to permit a design-build contractor to prepare a response**  
21 **to the sewer district's request for proposals for a design-build project, which may include**  
22 **preliminary designs for the project or portions thereof;**

23           **(6) "Sewer district", any metropolitan sewer district established under section**  
24 **30(a), article VI, Constitution of Missouri.**

25           **2. (1) Notwithstanding any other provision of law to the contrary, any sewer**  
26 **district is authorized to enter into design-build contracts for design-build projects that**  
27 **exceed an expenditure of one million dollars.**

28           **(2) In using a design-build contract, the sewer district shall establish a written**  
29 **procedure by rule for prequalifying design-build contractors before such design-build**  
30 **contractors will be allowed to make a proposal on the project.**

31           **(3) The sewer district shall adopt procedures for:**

32           **(a) The prequalification review team;**

33           **(b) Specifications for the design criteria package;**

34           **(c) The method of advertising, receiving, and evaluating proposals from**  
35 **design-build contractors;**

36           **(d) The criteria for awarding the design-build contract based on the design criteria**  
37 **package and a separate proposal stating the cost of construction; and**

38           **(e) Other methods, procedures, and criteria necessary to administer this section.**

39           **(4) The sewer district is authorized to issue a request for proposals to a maximum**  
40 **of five design-build contractors who are prequalified in accordance with this section.**

41           **(5) The sewer district may require approval of any person performing subcontract**  
42 **work on the design-build project including, but not limited to, those furnishing design**  
43 **services, labor, materials or equipment.**

44           **3. (1) Before the prequalification process specified in this section, the sewer district**  
45 **shall publicly advertise, once a week for two consecutive weeks, in a newspaper of general**  
46 **circulation, qualified under chapter 493, located within the cities located in the sewer**  
47 **district, or if there be no such newspaper, in a qualified newspaper of general circulation**  
48 **in the county, or if there be no such newspaper, in a qualified newspaper of general**  
49 **circulation in an adjoining county, and may advertise in business, trade, or minority**  
50 **newspapers, for qualification submissions on said design-build project.**

51           **(2) If the sewer district fails to receive at least two responsive submissions from**  
52 **prequalified design-build contractors, submissions shall not be opened and the sewer shall**  
53 **readvertise the project.**

54           **(3) The sewer district shall have the right to reject any and all submissions and**  
55 **proposals.**

56           **(4) The proposals from prequalified design-build contractors shall be submitted**  
57 **sealed and in writing, to be opened publicly at the time and place of the sewer district's**  
58 **choosing. Technical proposals and qualifications submissions shall be submitted**

59 separately from any cost proposals. No cost proposal shall be opened until the technical  
60 proposals and qualifications submissions are first opened, evaluated, and ranked in  
61 accordance with the criteria identified by the sewer district in the request for proposals.

62 (5) The design-build contract shall be awarded to the design-build contractor  
63 whose proposal represents the best overall value to the sewer district in terms of quality,  
64 technical skill, schedule, and cost.

65 (6) No proposal shall be entertained by the sewer district that is not made in  
66 accordance with the request for proposals furnished by the sewer district.

67 4. (1) The payment bond requirements of section 107.170 shall apply to the  
68 design-build project. All persons furnishing design services shall be deemed to be covered  
69 by the payment bond the same as any person furnishing labor or materials; however, the  
70 performance bond for the design-build contractor does not need to cover the design  
71 services as long as the design-build contractor or its subcontractors providing design  
72 services carry professional liability insurance in an amount established by the sewer  
73 district in the request for proposals.

74 (2) Any person or firm providing architectural, engineering, or land surveying  
75 services for the design-build contractor on the design-build project shall be duly licensed  
76 or authorized in this state to provide such services as required by chapter 327.

77 5. (1) A sewer district planning a design-build project shall retain an architect or  
78 engineer, as appropriate to the project type, under sections 8.285 to 8.291, to assist with  
79 programming, site selection, master plan, the design criteria package, preparation of the  
80 request for proposals, prequalifying design-build contractors, evaluation of proposals, and  
81 preparation of forms necessary to award the design-build contract. The sewer district shall  
82 also retain that same architect or engineer or another to perform contract administration  
83 functions on behalf of the sewer district during the construction phase and after project  
84 completion. If the sewer district has an architect or engineer capable of fulfilling the  
85 functions described in this section, the sewer district is exempt from being required to  
86 retain another such professional.

87 (2) Any architect or engineer who is retained by a sewer district under this section  
88 shall be ineligible to act as the design-build contractor, or to participate as part of the  
89 design-build contractor's team as a subcontractor, joint venturer, partner, or otherwise for  
90 the same design-build project for which the architect or engineer was hired by the sewer  
91 district.

92 6. Under section 327.465, any design-build contractor that enters into a  
93 design-build contract for a sewer district is exempt from the requirement that such person  
94 or entity hold a certificate of registration or such corporation hold a certificate of authority

95 **if the architectural, engineering, or land surveying services to be performed under the**  
96 **contract are performed through subcontracts with properly licensed and authorized**  
97 **persons or entities, and not performed by the design-build contractor or its own employees.**

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