

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2376

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof three new sections relating to construction regulation.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 227.107, is repealed and three new  
2 sections enacted in lieu thereof, to be known as sections  
3 67.5050, 67.5060, and 227.107, to read as follows:

4           67.5050. 1. As used in this section, the following terms  
5 mean:

6           (1) "Construction manager", the legal entity that proposes  
7 to enter into a construction management-at-risk contract under  
8 this section;

9           (2) "Construction manager-at-risk", a sole proprietorship,  
10 partnership, corporation, or other legal entity that assumes the  
11 risk for the construction, rehabilitation, alteration, or repair  
12 of a project at the contracted price as a general contractor and  
13 provides consultation to a political subdivision regarding  
14 construction during and after the design of the project.

1           2. Any political subdivision may use the construction  
2 manager-at-risk method for: civil works projects such as roads,  
3 streets, bridges, utilities, water supply projects, water plants,  
4 wastewater plants, water distribution and wastewater conveyance  
5 facilities, airport runways and taxiways, storm drainage and  
6 flood control projects, or transit projects commonly designed by  
7 professional engineers in excess of two million dollars; and non-  
8 civil works projects such as buildings, site improvements, and  
9 other structures, habitable or not, commonly designed by  
10 architects in excess of three million dollars. In using that  
11 method and in entering into a contract for the services of a  
12 construction manager-at-risk, the political subdivision shall  
13 follow the procedures prescribed by this section.

14           3. Before or concurrently with selecting a construction  
15 manager-at-risk, the political subdivision shall select or  
16 designate an engineer or architect who shall prepare the  
17 construction documents for the project and who shall comply with  
18 all state laws, as applicable. If the engineer or architect is  
19 not a full-time employee of the political subdivision, the  
20 political subdivision shall select the engineer or architect on  
21 the basis of demonstrated competence and qualifications as  
22 provided by sections 8.285 to 8.291. The political subdivision's  
23 engineer or architect for a project may not serve, alone or in  
24 combination with another, as the construction manager-at-risk.  
25 This subsection does not prohibit a political subdivision's  
26 engineer or architect from providing customary construction phase  
27 services under the engineer's or architect's original  
28 professional service agreement in accordance with applicable

1 licensing laws.

2 4. The political subdivision may provide or contract for,  
3 independently of the construction manager-at-risk, inspection  
4 services, testing of construction materials, engineering, and  
5 verification of testing services necessary for acceptance of the  
6 project by the political subdivision.

7 5. The political subdivision shall select the construction  
8 manager-at-risk in a two-step process. The political subdivision  
9 shall prepare a request for qualifications, for the case of the  
10 first step of the two-step process, that includes general  
11 information on the project site, project scope, schedule,  
12 selection criteria, and the time and place for receipt of  
13 proposals or qualifications, as applicable, and other information  
14 that may assist the political subdivision in its selection of a  
15 construction manager-at-risk. The political subdivision shall  
16 state the selection criteria in the request for proposals or  
17 qualifications, as applicable. The selection criteria may  
18 include the construction manager's experience, past performance,  
19 safety record, proposed personnel and methodology, and other  
20 appropriate factors that demonstrate the capability of the  
21 construction manager-at-risk. The political subdivision shall  
22 not request fees or prices in step one. In step two, the  
23 political subdivision may request that five or fewer construction  
24 managers, selected solely on the basis of qualifications, provide  
25 additional information, including the construction manager-at-  
26 risk's proposed fee and its price for fulfilling the general  
27 conditions. Qualifications shall account for a minimum of forty  
28 percent of the evaluation. Cost shall account for a maximum of

1 sixty percent of the evaluation.

2 6. The political subdivision shall publish the request for  
3 proposals or qualifications by publication in a newspaper of  
4 general circulation published in the county where the political  
5 subdivision is located once a week for two consecutive weeks  
6 prior to opening the proposals or qualifications submissions or  
7 by a virtual notice procedure that notifies interested parties  
8 for at least twenty various purchases, design contracts,  
9 construction contracts, or other contracts each year for the  
10 political subdivision.

11 7. For each step, the political subdivision shall receive,  
12 publicly open, and read aloud the names of the construction  
13 managers. Within forty-five days after the date of opening the  
14 proposals or qualification submissions, the political subdivision  
15 or its representative shall evaluate and rank each proposal or  
16 qualification submission submitted in relation to the criteria  
17 set forth in the request for proposals or request for  
18 qualifications. The political subdivision shall interview at  
19 least two of the top qualified offerors as part of the final  
20 selection.

21 8. The political subdivision or its representative shall  
22 select the construction manager that submits the proposal that  
23 offers the best value for the political subdivision based on the  
24 published selection criteria and on its ranking evaluation. The  
25 political subdivision or its representative shall first attempt  
26 to negotiate a contract with the selected construction manager.  
27 If the political subdivision or its representative is unable to  
28 negotiate a satisfactory contract with the selected construction

1 manager, the political subdivision or its representative shall,  
2 formally and in writing, end negotiations with that construction  
3 manager and proceed to negotiate with the next construction  
4 manager in the order of the selection ranking until a contract is  
5 reached or negotiations with all ranked construction managers  
6 end.

7 9. A construction manager-at-risk shall publicly advertise,  
8 in the manner prescribed by chapter 50, and receive bids or  
9 proposals from trade contractors or subcontractors for the  
10 performance of all major elements of the work other than the  
11 minor work that may be included in the general conditions. A  
12 construction manager-at-risk may seek to perform portions of the  
13 work itself if the construction manager-at-risk submits its  
14 sealed bid or sealed proposal for those portions of the work in  
15 the same manner as all other trade contractors or subcontractors.  
16 All sealed bids or proposals shall be submitted at the time and  
17 location as specified in the advertisement for bids or proposals  
18 and shall be publicly opened and the identity of each bidder and  
19 their bid amount shall be read aloud. The political subdivision  
20 shall have the authority to restrict the construction manager-at-  
21 risk from submitting bids to perform portions of the work.

22 10. The construction manager-at-risk and the political  
23 subdivision or its representative shall review all trade  
24 contractor, subcontractor, or construction manager-at-risk bids  
25 or proposals in a manner that does not disclose the contents of  
26 the bid or proposal during the selection process to a person not  
27 employed by the construction manager-at-risk, engineer,  
28 architect, or political subdivision involved with the project.

1 If the construction manager-at-risk submitted bids or proposals,  
2 the political subdivision shall determine if the construction  
3 manager-at-risk's bid or proposal offers the best value for the  
4 political subdivision. After all proposals have been evaluated  
5 and clarified, the award of all subcontracts shall be made  
6 public.

7 11. If the construction manager-at-risk reviews, evaluates,  
8 and recommends to the political subdivision a bid or proposal  
9 from a trade contractor or subcontractor but the political  
10 subdivision requires another bid or proposal to be accepted, the  
11 political subdivision shall compensate the construction manager-  
12 at-risk by a change in price, time, or guaranteed maximum cost  
13 for any additional cost and risk that the construction manager-  
14 at-risk may incur because of the political subdivision's  
15 requirement that another bid or proposal be accepted.

16 12. If a selected trade contractor or subcontractor  
17 materially defaults in the performance of its work or fails to  
18 execute a subcontract after being selected in accordance with  
19 this section, the construction manager-at-risk may itself,  
20 without advertising, fulfill the contract requirements or select  
21 a replacement trade contractor or subcontractor to fulfill the  
22 contract requirements. The penal sums of the performance and  
23 payment bonds delivered to the political subdivision shall each  
24 be in an amount equal to the fixed contract amount or guaranteed  
25 maximum price. The construction manager-at-risk shall deliver  
26 the bonds not later than the tenth day after the date the fixed  
27 contract amount or guaranteed maximum price is established.

28 13. Any political subdivision engaged in a project under

1 this section, which impacts a railroad regulated by the Federal  
2 Railroad Administration, shall consult with the affected railroad  
3 on required specifications relating to clearance, safety,  
4 insurance, and indemnification to be included in the construction  
5 documents for such project.

6 14. This section shall not apply to:

7 (1) Any metropolitan sewer district established under  
8 article VI, section 30(a) of the Constitution of Missouri;

9 (2) Any special charter city, or any city or county  
10 governed by home rule under article VI, section 18 or 19 of the  
11 Constitution of Missouri that has adopted a construction manager-  
12 at-risk method via ordinance, rule or regulation.

13 15. Notwithstanding the provisions of section 23.253 to the  
14 contrary, the provisions of this section shall expire September  
15 1, 2026.

16 67.5060. 1. As used in this section, the following terms  
17 mean:

18 (1) "Design-build", a project delivery method subject to a  
19 three-stage qualifications-based selection for which the design  
20 and construction services are furnished under one contract;

21 (2) "Design-build contract", a contract which is subject to  
22 a three-stage qualifications-based selection process similar to  
23 that described in sections 8.285 to 8.291 between a political  
24 subdivision and a design-builder to furnish the architectural,  
25 engineering, and related design services and the labor,  
26 materials, supplies, equipment, and other construction services  
27 required for a design-build project;

28 (3) "Design-build project", the design, construction,

1 alteration, addition, remodeling, or improvement of any buildings  
2 or facilities under contract with a political subdivision. Such  
3 design-build projects include, but are not limited to:

4 (a) Civil works projects, such as roads, streets, bridges,  
5 utilities, airport runways and taxiways, storm drainage and flood  
6 control projects, or transit projects; and

7 (b) Non-civil works projects, such as buildings, site  
8 improvements, and other structures, habitable or not, commonly  
9 designed by architects in excess of seven million dollars;

10 (4) "Design-builder", any individual, partnership, joint  
11 venture, or corporation subject to a qualification-based  
12 selection that offers to provide or provides design services and  
13 general contracting services through a design-build contract in  
14 which services within the scope of the practice of professional  
15 architecture or engineering are performed respectively by a  
16 licensed architect or licensed engineer and in which services  
17 within the scope of general contracting are performed by a  
18 general contractor or other legal entity that furnishes  
19 architecture or engineering services and construction services  
20 either directly or through subcontracts or joint ventures;

21 (5) "Design criteria consultant", a person, corporation,  
22 partnership, or other legal entity duly licensed and authorized  
23 to practice architecture or professional engineering in this  
24 state under chapter 327, who is employed by or contracted by the  
25 political subdivision to assist the political subdivision in the  
26 development of project design criteria, requests for proposals,  
27 evaluation of proposals, the evaluation of the construction under  
28 a design-build contract to determine adherence to the design



1 criteria, and any additional services requested by the political  
2 subdivisions to represent its interests in relation to a project.  
3 The design criteria consultant may not submit a proposal or  
4 furnish design or construction services for the design-build  
5 contract for which its services were sought;

6 (6) "Design criteria package", performance-oriented  
7 program, scope, and specifications for the design-build project  
8 sufficient to permit a design-builder to prepare a response to a  
9 political subdivision's request for proposals for a design-build  
10 project, which may include capacity, durability, standards,  
11 ingress and egress requirements, performance requirements,  
12 description of the site, surveys, soil and environmental  
13 information concerning the site, interior space requirements,  
14 material quality standards, design and construction schedules,  
15 site development requirements, provisions for utilities, storm  
16 water retention and disposal, parking requirements, applicable  
17 governmental code requirements, preliminary designs for the  
18 project or portions thereof, and other criteria for the intended  
19 use of the project;

20 (7) "Design professional services", services that are:

21 (a) Within the practice of architecture as defined in  
22 section 327.091, or within the practice of professional  
23 engineering as defined in section 327.181; or

24 (b) Performed by a licensed or authorized architect or  
25 professional engineer in connection with the architect's or  
26 professional engineer's employment or practice;

27 (8) "Proposal", an offer in response to a request for  
28 proposals by a design-builder to enter into a design-build

1 contract for a design-build project under this section;

2 (9) "Request for proposal", the document by which the  
3 political subdivision solicits proposals for a design-build  
4 contract;

5 (10) "Stipend", an amount paid to the unsuccessful but  
6 responsive, short-listed design-builders to defray the cost of  
7 participating in phase II of the selection process described in  
8 this section.

9 2. In using a design-build contract, the political  
10 subdivision shall determine the scope and level of detail  
11 required to permit qualified persons to submit proposals in  
12 accordance with the request for proposals given the nature of the  
13 project.

14 3. A design criteria consultant shall be employed or  
15 retained by the political subdivision to assist in preparation of  
16 the design criteria package and request for proposal, perform  
17 periodic site visits to observe adherence to the design criteria,  
18 prepare progress reports, review and approve progress and final  
19 pay applications of the design-builder, review shop drawings and  
20 submissions, provide input in disputes, help interpret the  
21 construction documents, perform inspections upon substantial and  
22 final completion, assist in warranty inspections, and provide any  
23 other professional service assisting with the project  
24 administration. The design criteria consultant may also evaluate  
25 construction as to the adherence of the design criteria. The  
26 consultant shall be selected and its contract negotiated in  
27 compliance with sections 8.285 to 8.291 unless the consultant is  
28 a direct employee of the political subdivision.

1       4. Notice of requests for proposals shall be advertised by  
2 publication in a newspaper of general circulation published in  
3 the county where the political subdivision is located once a week  
4 for two consecutive weeks prior to opening the proposals, or by a  
5 virtual notice procedure that notifies interested parties for at  
6 least twenty various purchases, design contracts, construction  
7 contracts, or other contracts each year for the political  
8 subdivision. The political subdivision shall publish a notice of  
9 a request for proposal with a description of the project, the  
10 procedures for submission, and the selection criteria to be used.

11       5. The political subdivision shall establish in the request  
12 for proposal a time, place, and other specific instructions for  
13 the receipt of proposals. Proposals not submitted in strict  
14 accordance with the instructions shall be subject to rejection.

15       6. A request for proposal shall be prepared for each  
16 design-build contract containing at minimum the following  
17 elements:

18       (1) The procedures to be followed for submitting proposals,  
19 the criteria for evaluating proposals and their relative weight,  
20 and the procedures for making awards;

21       (2) The proposed terms and conditions for the design-build  
22 contract, if available;

23       (3) The design criteria package;

24       (4) A description of the drawings, specifications, or other  
25 information to be submitted with the proposal, with guidance as  
26 to the form and level of completeness of the drawings,  
27 specifications, or other information that will be acceptable;

28       (5) A schedule for planned commencement and completion of

1 the design-build contract, if any;

2 (6) Budget limits for the design-build contract, if any;

3 (7) Requirements including any available ratings for  
4 performance bonds, payment bonds, and insurance, if any;

5 (8) The amount of the stipend which will be available; and

6 (9) Any other information that the political subdivision in  
7 its discretion chooses to supply including, but not limited to,  
8 surveys, soil reports, drawings of existing structures,  
9 environmental studies, photographs, references to public records,  
10 or affirmative action and minority business enterprise  
11 requirements consistent with state and federal law.

12 7. The political subdivision shall solicit proposals in a  
13 three-stage process. Phase I shall be the solicitation of  
14 qualifications of the design-build team. Phase II shall be the  
15 solicitation of a technical proposal including conceptual design  
16 for the project. Phase III shall be the proposal of the  
17 construction cost.

18 8. The political subdivision shall review the submissions  
19 of the proposals and assign points to each proposal in accordance  
20 with this section and as set out in the instructions of the  
21 request for proposal.

22 9. Phase I shall require all design-builders to submit a  
23 statement of qualification that shall include, but not be limited  
24 to:

25 (1) Demonstrated ability to perform projects comparable in  
26 design, scope, and complexity;

27 (2) References of owners for whom design-build projects,  
28 construction projects, or design projects have been performed;

1       (3) Qualifications of personnel who will manage the design  
2 and construction aspects of the project; and

3       (4) The names and qualifications of the primary design  
4 consultants and the primary trade contractors with whom the  
5 design-builder proposes to subcontract or joint venture. The  
6 design-builder may not replace an identified contractor,  
7 subcontractor, design consultant, or subconsultant without the  
8 written approval of the political subdivision.

9       10. The political subdivision shall evaluate the  
10 qualifications of all the design-builders who submitted proposals  
11 in accordance with the instructions of the request for proposal.  
12 Architectural and engineering services on the project shall be  
13 evaluated in accordance with the requirements of sections 8.285  
14 and 8.291. Qualified design-builders selected by the evaluation  
15 team may proceed to phase II of the selection process. Design-  
16 builders lacking the necessary qualifications to perform the work  
17 shall be disqualified and shall not proceed to phase II of the  
18 process. This process of short listing shall narrow the number  
19 of qualified design-builders to not more than five nor fewer than  
20 two. Under no circumstances shall price or fees be a part of the  
21 prequalification criteria. Design-builders may be interviewed in  
22 either phase I or phase II of the process. Points assigned in  
23 phase I of the evaluation process shall not carry forward to  
24 phase II of the process. All qualified design-builders shall be  
25 ranked on points given in phases II and III only.

26       11. The political subdivision shall have discretion to  
27 disqualify any design-builder who, in the political subdivision's  
28 opinion, lacks the minimum qualifications required to perform the

1 work.

2 12. Once a sufficient number of no more than five and no  
3 fewer than two qualified design-builders have been selected, the  
4 design-builders shall have a specified amount of time in which to  
5 assemble phase II and phase III proposals.

6 13. Phase II of the process shall be conducted as follows:

7 (1) The political subdivision shall invite the top  
8 qualified design-builders to participate in phase II of the  
9 process;

10 (2) A design-builder shall submit its design for the  
11 project to the level of detail required in the request for  
12 proposal. The design proposal shall demonstrate compliance with  
13 the requirements set out in the request for proposal;

14 (3) The ability of the design-builder to meet the schedule  
15 for completing a project as specified by the political  
16 subdivision may be considered as an element of evaluation in  
17 phase II;

18 (4) Up to twenty percent of the points awarded to each  
19 design-builder in phase II may be based on each design-builder's  
20 qualifications and ability to design, contract, and deliver the  
21 project on time and within the budget of the political  
22 subdivision;

23 (5) Under no circumstances shall the design proposal  
24 contain any reference to the cost of the proposal; and

25 (6) The submitted designs shall be evaluated and assigned  
26 points in accordance with the requirements of the request for  
27 proposal. Phase II shall account for not less than forty percent  
28 of the total point score as specified in the request for

1 proposal.

2 14. Phase III shall be conducted as follows:

3 (1) The phase III proposal shall provide a firm, fixed cost  
4 of design and construction. The proposal shall be accompanied by  
5 bid security and any other items, such as statements of minority  
6 participation as required by the request for proposal;

7 (2) Cost proposals shall be submitted in accordance with  
8 the instructions of the request for proposal. The political  
9 subdivision shall reject any proposal that is not submitted on  
10 time. Phase III shall account for not less than forty percent of  
11 the total point score as specified in the request for proposal;

12 (3) Proposals for phase II and phase III shall be submitted  
13 concurrently at the time and place specified in the request for  
14 proposal, but in separate envelopes or other means of submission.  
15 The phase III cost proposals shall be opened only after the phase  
16 II design proposals have been evaluated and assigned points,  
17 ranked in order, and posted;

18 (4) Cost proposals shall be opened and read aloud at the  
19 time and place specified in the request for proposal. At the  
20 same time and place, the evaluation team shall make public its  
21 scoring of phase II. Cost proposals shall be evaluated in  
22 accordance with the requirements of the request for proposal. In  
23 evaluating the cost proposals, the lowest responsive bidder shall  
24 be awarded the total number of points assigned to be awarded in  
25 phase III. For all other bidders, cost points shall be  
26 calculated by reducing the maximum points available in phase III  
27 by at least one percent for each percentage point by which the  
28 bidder exceeds the lowest bid and the points assigned shall be

1 added to the points assigned for phase II for each design-  
2 builder;

3 (5) If the political subdivision determines that it is not  
4 in the best interest of the political subdivision to proceed with  
5 the project pursuant to the proposal offered by the design-  
6 builder with the highest total number of points, the political  
7 subdivision shall reject all proposals. In this event, all  
8 qualified and responsive design-builders with lower point totals  
9 shall receive a stipend and the responsive design-builder with  
10 the highest total number of points shall receive an amount equal  
11 to two times the stipend. If the political subdivision decides  
12 to award the project, the responsive design-builder with the  
13 highest number of points shall be awarded the contract; and

14 (6) If all proposals are rejected, the political  
15 subdivision may solicit new proposals using different design  
16 criteria, budget constraints, or qualifications.

17 15. As an inducement to qualified design-builders, the  
18 political subdivision shall pay a reasonable stipend, the amount  
19 of which shall be established in the request for proposal, to  
20 each prequalified design-builder whose proposal is responsive but  
21 not accepted. Such stipend shall be no less than one-half of one  
22 percent of the total project budget. Upon payment of the stipend  
23 to any unsuccessful design-builder, the political subdivision  
24 shall acquire a nonexclusive right to use the design submitted by  
25 the design-builder, and the design-builder shall have no further  
26 liability for the use of the design by the political subdivision  
27 in any manner. If the design-builder desires to retain all  
28 rights and interest in the design proposed, the design-builder



1 shall forfeit the stipend.

2 16. As used in this subsection, "wastewater or water  
3 contract" means any design-build contract that involves the  
4 provision of engineering and construction services either  
5 directly by a party to the contract or through subcontractors  
6 retained by a party to the contract for a wastewater or water  
7 storage, conveyance, or treatment facility project.

8 (1) Any political subdivision may enter into a wastewater  
9 or water contract for design-build of a wastewater or water  
10 project.

11 (2) In disbursing community development block grants under  
12 42 U.S.C. Sections 5301 to 5321, the department of economic  
13 development shall not reject wastewater or water projects solely  
14 for utilizing wastewater or water contracts.

15 (3) The department of natural resources shall not preclude  
16 wastewater or water contracts from consideration for funding  
17 provided by the water and wastewater loan fund under section  
18 644.122.

19 (4) A political subdivision planning a wastewater or water  
20 design-build project shall retain an engineer duly licensed in  
21 this state to assist in preparing any necessary documents and  
22 specifications and evaluations of design-build proposals.

23 17. The payment bond requirements of section 107.170 shall  
24 apply to the design-build project. All persons furnishing design  
25 services shall be deemed to be covered by the payment bond the  
26 same as any person furnishing labor and materials. The  
27 performance bond for the design-builder shall not cover any  
28 damages of the type specified to be covered by the professional

1 liability insurance established by the political subdivision in  
2 the request for proposals.

3 18. Any person or firm performing architectural,  
4 engineering, landscape architecture, or land-surveying services  
5 for the design-builder on the design-build project shall be duly  
6 licensed or authorized in this state to provide such services as  
7 required by chapter 327.

8 19. Any political subdivision engaged in a project under  
9 this section, which impacts a railroad regulated by the Federal  
10 Railroad Administration, shall consult with the affected railroad  
11 on required specifications relating to clearance, safety,  
12 insurance, and indemnification to be included in the construction  
13 documents for such project.

14 20. Under section 327.465, any design-builder that enters  
15 into a design-build contract with a political subdivision is  
16 exempt from the requirement that such person or entity hold a  
17 license or that such corporation hold a certificate of authority  
18 if the architectural, engineering, or land-surveying services to  
19 be performed under the design-build contract are performed  
20 through subcontracts or joint ventures with properly licensed or  
21 authorized persons or entities, and not performed by the design-  
22 builder or its own employees.

23 21. This section shall not apply to:

24 (1) Any metropolitan sewer district established under  
25 article VI, section 30(a) of the Constitution of Missouri; or

26 (2) Any special charter city, or any city or county  
27 governed by home rule under article VI, section 18 or 19 of the  
28 Constitution of Missouri that has adopted a design-build process

1 via ordinance, rule, or regulation.

2 22. The authority to use design-build and design-build  
3 contracts provided under this section shall expire September 1,  
4 2026.

5 227.107. 1. Notwithstanding any provision of section  
6 227.100 to the contrary, as an alternative to the requirements  
7 and procedures specified by sections 227.040 to 227.100, the  
8 state highways and transportation commission is authorized to  
9 enter into highway design-build project contracts. The total  
10 number of highway design-build project contracts awarded by the  
11 commission in any state fiscal year shall not exceed two percent  
12 of the total number of all state highway system projects awarded  
13 to contracts for construction from projects listed in the  
14 commission's approved statewide transportation improvement  
15 project for that state fiscal year. [Authority to enter into  
16 design-build projects granted by this section shall expire on  
17 July 1, 2018, unless extended by statute.]

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

1 one county. The state highways and transportation commission is  
2 authorized to enter into an additional design-build contract for  
3 the design, construction, reconstruction, or improvement of State  
4 Highway 92, contained in a county of the first classification  
5 with more than one hundred eighty-four thousand but fewer than  
6 one hundred eighty-eight thousand inhabitants, from its  
7 intersection with State Highway 169, east to its intersection  
8 with State Highway E. The state highways and transportation  
9 commission is authorized to enter into an additional design-build  
10 contract for the design, construction, reconstruction, or  
11 improvement of US 40/61 I-64 Missouri River Bridge as contained  
12 in any county with a charter form of government and with more  
13 than one million inhabitants and any county with a charter form  
14 of government and with more than two hundred fifty thousand but  
15 fewer than three hundred fifty thousand inhabitants. [The  
16 authority to enter into a design-build highway project under this  
17 subsection shall not be subject to the time limitation expressed  
18 in subsection 1 of this section.]

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

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

1 necessary materials and services.

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

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

11 7. In any design-build highway project contract, whether  
12 involving state or federal funds, the commission shall require  
13 that each person submitting a request for qualifications provide  
14 a detailed disadvantaged business enterprise participation plan.  
15 The plan shall provide information describing the experience of  
16 the person in meeting disadvantaged business enterprise  
17 participation goals, how the person will meet the department of  
18 transportation's disadvantaged business enterprise participation  
19 goal and such other qualifications that the commission considers  
20 to be in the best interest of the state.

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

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

26 10. Notwithstanding the provisions of sections 107.170, and  
27 227.100, to the contrary, the commission shall require the  
28 design-builder to provide to the commission directly such bid,

1 performance and payment bonds, or such letters of credit, in such  
2 terms, durations, amounts, and on such forms as the commission  
3 may determine to be adequate for its protection and provided by a  
4 surety or sureties authorized to conduct surety business in the  
5 state of Missouri or a federally insured financial institution or  
6 institutions, satisfactory to the commission, including but not  
7 limited to:

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

10 (2) A performance bond or bonds for the construction period  
11 specified in the design-build highway project contract equal to a  
12 reasonable estimate of the total cost of construction work under  
13 the terms of the design-build highway project contract. If the  
14 commission determines in writing supported by specific findings  
15 that the reasonable estimate of the total cost of construction  
16 work under the terms of the design-build highway project contract  
17 is expected to exceed two-hundred fifty million dollars and a  
18 performance bond or bonds in such amount is impractical, the  
19 commission shall set the performance bond or bonds at the largest  
20 amount reasonably available, but not less than two-hundred fifty  
21 million dollars, and may require additional security, including  
22 but not limited to letters of credit, for the balance of the  
23 estimate not covered by the performance bond or bonds;

24 (3) A payment bond or bonds that shall be enforceable under  
25 section 522.300 for the protection of persons supplying labor and  
26 material in carrying out the construction work provided for in  
27 the design-build highway project contract. The aggregate amount  
28 of the payment bond or bonds shall equal a reasonable estimate of

1 the total amount payable for the cost of construction work under  
2 the terms of the design-build highway project contract unless the  
3 commission determines in writing supported by specific findings  
4 that a payment bond or bonds in such amount is impractical, in  
5 which case the commission shall establish the amount of the  
6 payment bond or bonds; except that the amount of the payment bond  
7 or bonds shall not be less than the aggregate amount of the  
8 performance bond or bonds and any additional security to such  
9 performance bond or bonds; and

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

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

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

21 13. The provisions of sections 8.285 to 8.291 shall not  
22 apply to the procurement of architectural, engineering or land  
23 surveying services for the design-build highway project, except  
24 that any person providing architectural, engineering or land  
25 surveying services for the design-builder on the design-build  
26 highway project must be licensed in Missouri to provide such  
27 services.

28 14. The commission shall pay a reasonable stipend to

1 prequalified responsive design-builders who submit a proposal,  
2 but are not awarded the design-build highway project.

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

7 16. The commission shall promulgate administrative rules to  
8 implement this section or to secure federal funds. Such rules  
9 shall be published for comment in the Missouri Register and shall  
10 include prequalification criteria, the make-up of the  
11 prequalification review team, specifications for the design  
12 criteria package, the method of advertising, receiving and  
13 evaluating proposals from design-builders, the criteria for  
14 awarding the design-build highway project based on the design  
15 criteria package and a separate proposal stating the cost of  
16 construction, and other methods, procedures and criteria  
17 necessary to administer this section.

18 17. The commission shall make a status report to the  
19 members of the general assembly and the governor following the  
20 award of the design-build project, as an individual component of  
21 the annual report submitted by the commission to the joint  
22 transportation oversight committee in accordance with the  
23 provisions of section 21.795. The annual report prior to  
24 advertisement of the design-build highway project contracts shall  
25 state the goals of the project in reducing costs and/or the time  
26 of completion for the project in comparison to the  
27 design-bid-build method of construction and objective  
28 measurements to be utilized in determining achievement of such



1 goals. Subsequent annual reports shall include: the time  
2 estimated for design and construction of different phases or  
3 segments of the project and the actual time required to complete  
4 such work during the period; the amount of each progress payment  
5 to the design-builder during the period and the percentage and a  
6 description of the portion of the project completed regarding  
7 such payment; the number and a description of design change  
8 orders issued during the period and the cost of each such change  
9 order; upon substantial and final completion, the total cost of  
10 the design-build highway project with a breakdown of costs for  
11 design and construction; and such other measurements as specified  
12 by rule. The annual report immediately after final completion of  
13 the project shall state an assessment of the advantages and  
14 disadvantages of the design-build method of contracting for  
15 highway and bridge projects in comparison to the design-bid-build  
16 method of contracting and an assessment of whether the goals of  
17 the project in reducing costs and/or the time of completion of  
18 the project were met.

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

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

28 20. If the commission fails to receive at least two

1 responsive submissions from design-builders considered qualified,  
2 submissions shall not be opened and it shall readvertise the  
3 project.

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