

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED AMENDMENT

7 CSR 10-24.010 Definitions. The Missouri Highways and Transportation Commission is amending sections (1), (10), (13), (17), (20), (23), (27), (31), (33), and (45), adding a new section (13), renumbering sections (13) through (23), deleting sections (24) and (32), and renumbering sections (33) through (47).

PURPOSE: This amendment updates and corrects the proper incorporation of federal statutes and the National ITS Architecture consistent with section 536.031.4 RSMo, adds a definition for design activities relating to design-build contracts, deletes unnecessary definitions for non-qualified project and qualified project, expands the definition of a design-build contract, corrects the state statutes under which transportation development districts are organized and deletes unnecessary restrictive wording.

(1) Unless otherwise specified, in addition to the definitions provided for in this rule, the definitions in **Title 23, United States Code (U.S.C.) section 101(a)** are applicable to this chapter whether or not specifically restated, or revised herein, and in their unrevised form to the extent not in conflict with this chapter. **Title 23 U.S.C. section 101(a) is incorporated by reference into and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, D.C. 20402-0001, website: <http://bookstore.gpo.gov> on January 1, 2012.** This rule does not incorporate any subsequent amendments or additions to the United States Code in 23 U.S.C. 101(a).

(10) Construction means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance of bonds whether in accordance with 23 U.S.C. section 122 or other debt financing instruments and costs incurred by the state in performing project related audits that directly benefit the state highway program. **Title 23 U.S.C. section 122 is incorporated by reference into and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, D.C. 20402-0001, website: <http://bookstore.gpo.gov> on January 1, 2012.** This rule does not incorporate any subsequent amendments or additions to the United States Code in 23 U.S.C. 122. Such term includes:

- (A) Locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce);
- (B) Resurfacing, restoration, and rehabilitation;
- (C) Acquisition of rights-of-way;
- (D) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;
- (E) Elimination of hazards of railway grade crossings;
- (F) Elimination of roadside obstacles;

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(G) Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) Capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(13) Design means any design activities and includes the preparation of construction plans and detailed specifications for the performance of construction work.

[(13)](14) Design-build contract means *[an agreement that provides for design and construction of improvements by a contractor or private developer.]* **a single contract that provides for design and construction, including any related services and materials, of a state highway project by a contractor or private developer. The term encompasses alternative project delivery methods including design-build, design-build-operate-maintain, design-build-operate, design-build maintain, design-build-finance, design-build-finance-operate-maintain, engineer-procure-construct and other contracts that include services in addition to design and construction.**

[(14)](15) Design-builder means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership or other entity making a proposal to be contractually responsible to perform, or which is performing, the project design and construction under a design-build contract.

[(15)](16) Disadvantaged business enterprise (DBE) means a for-profit small business concern—

(A) That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation or other business entity, in which fifty-one percent (51%) of the stock or shares are owned by one or more socially and economically disadvantaged individuals; and

(B) Whose management and daily business operations are controlled by one or more of those socially and economically disadvantaged individuals who own the disadvantaged business enterprise.

[(16)](17) Discussions mean written or oral exchanges that take place after the establishment of the competitive range with the intent of allowing the proposers to revise their proposals.

[(17)](18) Division A[a]dministrator means the D[d]ivision A[a]dministrator, Missouri Division of the Federal Highway Administration, United States Department of Transportation (FHWA).

[(18)](19) Fixed price/best design means a form of best value selection in which contract price is established by the contracting agency and stated in the Request for Proposals document. Design solutions and other qualitative factors are evaluated and rated, with award going to the firm offering the best qualitative proposal for the established price.

[(19)](20) Highway includes:

- (A) A road, street, and parkway;
- (B) A right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and
- (C) A portion of any interstate bridge or tunnel and the approaches thereto, the cost of which is assumed by the commission.

[(20)](21) Intelligent Transportation System (ITS) services means services which provide for the acquisition of technologies or systems of technologies (e.g., computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, etc.) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture. **National ITS Architecture is incorporated by reference into and made a part of this rule as published by the United States Department of Transportation Office of the Assistant Secretary for Research and Technology, 1200 New Jersey Ave., SE, Washington, D.C. 205090, website: <http://its.dot.gov> on December, 2014. This rule does not incorporate any subsequent amendments or additions to the National ITS Architecture.**

[(21)](22) Interstate system means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in 23 U.S.C. section 103(c).

[(22)](23) Modified design-build means a variation of design-build in which the contracting agency furnishes offerors with partially complete plans. The design-builders role is generally limited to the completion of the design and construction of the project.

[(23)](24) National Highway System (NHS) means the federal-aid highway system described in 23 U.S.C. section 103(b). **Title 23 U.S.C. section 103(b) is incorporated by reference into and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, D.C. 20402-0001, website: <http://bookstore.gpo.gov> on January 1, 2012. This rule does not incorporate any subsequent amendments or additions to the United States Code in 23 U.S.C. 103(b).**

[(24)] *Non-qualified project means a design-build project that does not meet the definition of a qualified project in 23 U.S.C. 112(b)(3)(C).]*

(27) Price proposal means the price submitted by the offeror to provide the *[required]* design and construction services **set forth in the request for proposal.**

(31) Project agreement means the formal instrument to be executed by the commission and the secretary *[as required by]* under 23 U.S.C. section 106. **Title 23 U.S.C. section 106 is incorporated by reference into and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, D.C. 20402-0001, website: <http://bookstore.gpo.gov> on January 1, 2012. This rule does not incorporate any subsequent amendments or additions to the United States Code in 23 U.S.C. 106.**

[(32)] *Qualified project means any design-build project with a total estimated cost greater than fifty (50) million dollars or an intelligent transportation system project greater than five (5)*

million dollars as described in 23 U.S.C. 112(b)(3)(C).]

[(33)](32) Request for Proposal (RFP) means a document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract. In any design-build contract, whether involving state or federal funds, *[the contracting agency shall require that each entity submitting a request for qualifications provide]* a detailed DBE participation plan **is to be included in each proposer's request for qualifications***[. The plan shall]***that** provides information describing the experience of the *[entity]***proposer** in meeting DBE participation goals, how the *[entity]***proposer** *[will]***intends to** meet the DBE goal **for the** design-build project and such other qualifications that the commission considers to be in the best interest of the state.

[(34)](33) Request for Qualification (RFQ) means a document issued by the contracting agency describing the project in enough detail to let potential proposers determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified proposers can be identified.

[(35)](34) Secretary means the Secretary of Transportation of the United States Department of Transportation.

[(36)](35) Short listing means the narrowing of the field of offerors through the selection of the most qualified proposers who have responded to an RFQ.

[(37)](36) Solicitation means a public notification of a contracting agency's need for information, qualifications, or proposals related to identified services.

[(38)](37) Standard design-build means a procurement process in which the first phase consists of short listing (based on qualifications submitted in response to an RFQ) and the second phase consists of the submission of price and technical proposals in response to an RFP.

[(39)](38) State means the state of Missouri, MoDOT or commission.

[(40)](39) State funds means funds raised under the authority of the state or any political or other subdivision thereof, and made available for expenditure under direct control of the commission or MoDOT.

[(41)](40) Stipend means a monetary amount paid to unsuccessful proposers.

[(42)](41) Technical proposal means that portion of a design-build proposal that contains design solutions and other qualitative factors that are provided in response to the RFP document.

[(43)](42) Tradeoff means an analysis technique involving a comparison of price and non-price factors to determine the best value when considering the selection of other than the lowest priced proposal.

[(44)](43) Transportation corporation means any transportation corporation organized under sections 238.300 to 238.367, RSMo.

[(45)](44) Transportation development district means a transportation development district organized under sections 238.200 to [238.275]238.280, RSMo.

[(46)](45) Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

[(47)](46) Weighted criteria process means a form of best value selection in which maximum point values are pre-established for qualitative and price components, and award is based upon high total points earned by the proposers.

*AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. * Original rule filed Aug. 15, 2005, effective Feb. 28, 2006. Amended: Filed December 5, 2017.*

**Original authority: 226.020, RSMo 1939; 226.030, RSMo 1939, amended 1965, 2003, 2004; and 227.107, RSMo 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, 105 W. Capitol Avenue, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.