

FIRST REGULAR SESSION

[CORRECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 167

100TH GENERAL ASSEMBLY

0888H.05C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 107.170, RSMo, and to enact in lieu thereof one new section relating to contracts for construction services.

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

Section A. Section 107.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 107.170, to read as follows:

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

(1) "Contractor"~~[-]~~ :

(a) A person or business entity who:

a. Provides **or arranges for** construction services **on a public works project** under contract to a public entity~~[-]~~ **for a governmental purpose; or**

b. **Contracts, provides, or arranges for construction services on a public works project for a nongovernmental purpose when acting as a lessee, agent, designee, or representative of a public entity;**

(b) Contractor ~~[specifically does]~~ shall not include:

a. Professional engineers, architects or land surveyors licensed pursuant to chapter 327~~[-]~~

;

b. Those who provide environmental assessment services; ~~[or]~~

c. Those who design, create or otherwise provide works of art under a city's formally established program for the acquisition and installation of works of art and other aesthetic adornments to public buildings and property; **or**

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.

16 **d. A construction manager not-at-risk within the meaning of section 8.675, or who**
17 **does not otherwise enter into contracts with contractors for the furnishing of labor,**
18 **materials, or services to the public works project;**

19 (2) "Public entity", any official, board, commission or agency of this state or any county,
20 city, town, township, school, road district or other political subdivision of this state;

21 (3) "Public works", the erection, construction, alteration, repair or improvement of any
22 building, road, street, public utility or other public facility owned by the public entity, **including**
23 **work for nongovernmental purposes.**

24 2. It is hereby made the duty of all public entities in this state, in making contracts for
25 public works, the cost of which is estimated to exceed fifty thousand dollars, to be performed
26 for:

27 **(1) The public entity; or**

28 **(2) The public entity's lessee, agent, designee, or representative on work for**
29 **nongovernmental purposes,**

30

31 to require every contractor for such work to furnish to the public entity a bond with good and
32 sufficient sureties, in an amount fixed by the public entity~~[, and]~~ . Such bond, among other
33 conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed
34 or used in connection with the construction of such work~~[, and]~~ ; all insurance premiums, both
35 for compensation, and for all other kinds of insurance, **on** said work~~[,]~~ ; and for all labor
36 performed in such work whether by a subcontractor, **a supplier at any tier**, or otherwise.
37 **Remote suppliers shall not be entitled to recovery under the bond required by this section,**
38 **unless such suppliers shall have given written notice to the contractor that it has not been**
39 **paid within ninety days of the time the supplier last supplied materials on the public works**
40 **project. For purposes of this provision, a "remote supplier" is any material supplier to a**
41 **public works project having a contract with a second, or lower, tier subcontractor, or with**
42 **another material supplier of any tier.**

43 3. All bonds executed and furnished under the provisions of this section shall be deemed
44 to contain the requirements and conditions as herein set out, regardless of whether the same be
45 set forth in said bond, or of any terms or provisions of said bond to the contrary notwithstanding.

46 4. Nothing in this section shall be construed to require a member of the school board of
47 any public school district of this state to independently confirm the existence or solvency of any
48 bonding company if a contractor represents to the member that the bonding company is solvent
49 and that the representations made in the purported bond are true and correct. This subsection
50 shall not relieve from any liability any school board member who has any actual knowledge of

51 the insolvency of any bonding company, or any school board member who does not act in good
52 faith in complying with the provisions of subsection 2 of this section.

53 5. A public entity may defend, save harmless and indemnify any of its officers and
54 employees, whether elective or appointive, against any claim or demand, whether groundless or
55 otherwise arising out of an alleged act or omission occurring in the performance of a duty under
56 this section. The provisions of this subsection do not apply in case of malfeasance in office or
57 willful or wanton neglect of duty.

58 **6. Nothing in this section shall be deemed to require any contractor who provides**
59 **construction services for a public works project used for nongovernmental purposes and**
60 **who contracts with a public entity's lessee, agent, designee, or representative on such public**
61 **works project used for nongovernmental purposes to furnish a bond when the public**
62 **entity's lessee, agent, designee, or representative is required under this section to furnish**
63 **a bond.**

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