
A PRACTICAL APPLICATION OF MISSOURI'S IMMIGRATION LAW REQUIREMENTS TO PUBLIC WORKS CONTRACTS AND RELATED DOCUMENTS

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During the 2008 legislative session, the Missouri General Assembly adopted HB 1549, which, among other things, created additional requirements affecting public works contracts. This article is a practical tool designed to provide suggested language for ordinances, bid invitations, and contracts for public works projects to make those documents compliant with the requirements of HB 1549 and the amendments to some of these provisions proposed in HB 390 (2009).

HB 1549 (2008) primarily affects public works con-

tract authorization program requirement in the event of an emergency that is caused by a natural or manmade disaster.

As indicated in 15 CSR 60-15.010, the primary work authorization program is E-Verify, which is a free service offered through the Department of Homeland Security in partnership with the Social Security Administration (www.uscis.gov). HB 390 also provides that if the federal government discontinues or fails to authorize or implement a work authorization program, the requirements of 285.530.2 RSMo will no longer apply. At the time of this writing, HB 390 had not been signed by the Governor; therefore, it remains possible that these amendments will not become law - be sure to verify the final status of HB 390 before proceeding with your next public works contract.

Although it is not required by statute, bid invitations should include language notifying bidders of this requirement. Sample language addressing this follows:

Enrollment in Federal Work Authorization Program Language

Bidders are informed that pursuant to Section 285.530 RSMo as a condition of the award of any contract in excess of five thousand dollars (\$5,000.00), the successful bidder shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Successful bidders shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the contracted services.

It is also prudent to address in the construction contract the prohibition found in Section 285.530.1 RSMo against hiring unauthorized aliens. To accomplish this, one can add a provision that is substantially similar to the following:

Section __. Authorized Employees

Contractor acknowledges that Section 285.530 RSMo prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. Contractor therefore covenants that it is not knowingly in violation of Subsection 1 of Section 285.530 RSMo, and that it will



tracts and related documents in two ways: First, a political subdivision's award of any contract in excess of \$5,000 is conditioned upon the successful bidder's enrollment and participation in a federal work authorization program. Second, all contractors and subcontractors doing work on a public works contract are required to provide, and cause all on-site employees to complete a ten-hour OSHA safety training course.

The condition for the award of bids is found at Section 285.530.2 RSMo. That section requires a successful bidder to provide a sworn affidavit affirming its enrollment and participation in a federal work authorization program. In the 2009 legislative session, the General Assembly, through HB 390, amended this section to clarify that the required affidavits need only be submitted on an annual basis. HB 390 (2009) also provides a 15 working-day suspension of the work

not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the project, and that its employees are lawfully eligible to work in the United States.

HB 1549's safety training requirements are located at Section 292.675 RSMo; however, these requirements do not go in to effect until August 28, 2009. Section 292.675 RSMo requires any contractor¹ for any public body for purposes of construction of public works and any subcontractor to such contractor to provide, and require its on-site employees to complete a ten-hour OSHA construction safety program. On-site employees must complete the safety training program within 60 days of beginning work on the project. HB 390 (2009) amended this section to clarify that an on-site worker need only complete one, ten-hour training program; therefore, if the worker has already completed such a program, he or she need only provide documentation of the previous training.²

If a worker is found on-site without documentation that he or she has completed the training, he or she will have 20 days to produce such documentation. The General Assembly requires public bodies to address these requirements in the resolution or ordinance approving the project, the call for bids, and in the contract itself. §292.675.4 RSMo. Sample language to address these requirements is provided below:

Ordinance Language: (to be placed in any ordinance or resolution approving a project)

Section __. Safety Training Requirements.

a. The project approved by this ordinance is subject to the requirements of Section 292.675 RSMo, which

requires all contractors or subcontractors doing work on the project to provide, and require its on-site employees to complete, a ten (10) hour course in construction safety and health approved by the Occupational Safety and Health Administration ("OSHA") or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program. If on-site employees had not previously complete such training, the training must be completed within sixty (60) days of the date, work on the project commences. On-site employees found on the worksite without documentation of the required training shall have twenty (20) days to produce such documentation.

b. The request for bids for this project shall specify the requirements of Section 292.675 RSMo.

c. The contract awarded for this project shall specify the requirements of Section 292.675 RSMo, and shall include a notice of the penalties for a contractor's failure to comply with that statute.

Bid Invitation Language:
Safety Training

Bidders are informed that the project is subject to the requirements of Section 292.675 RSMo, which requires all contractors or subcontractors doing work on the project to provide, and require its on-site employees to complete, a ten (10) hour course in construction safety and health approved by the Occupational Safety and Health Administration ("OSHA") or a similar

program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program. If on-site employees had not previously completed such training, the training must be completed within sixty (60) days of the date, work on the project commences. On-site employees found on the worksite without documentation of the required training shall have twenty (20) days to produce such documentation.

Contract Language:

Section __. Safety Training

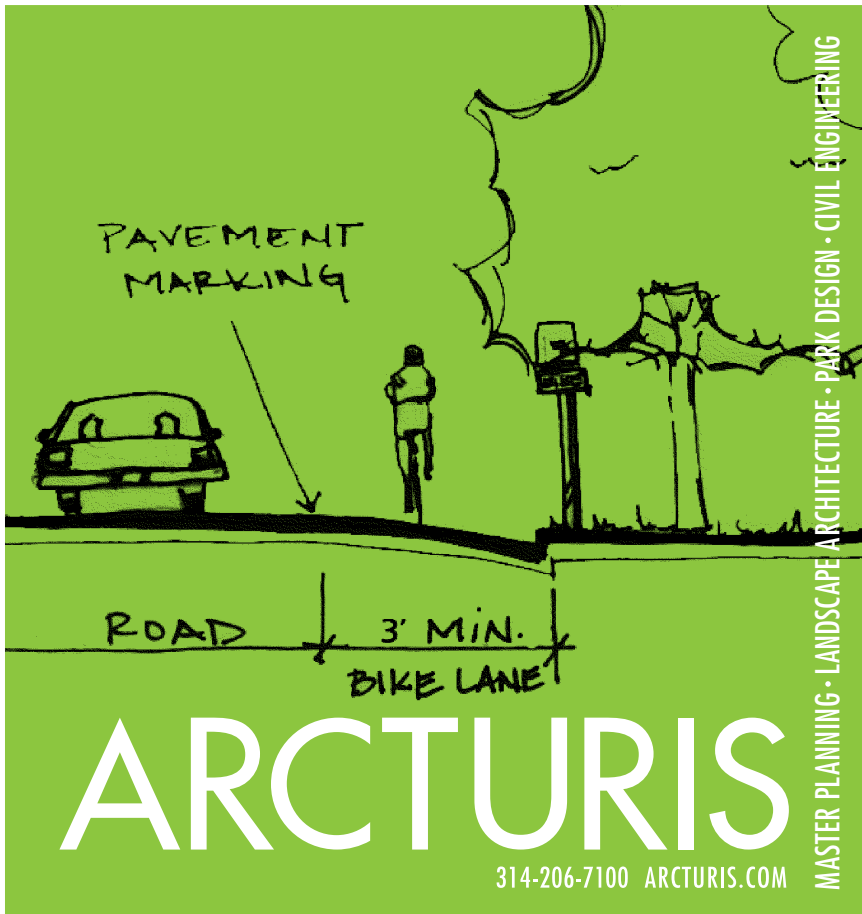
a. Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program as required by Section 292.675 RSMo.

b. If any on-site employees had not previously completed a construction safety program, contractor shall require those on-site employees to complete a construction safety program within sixty (60) days after the date, work on the project commences.

c. Contractor acknowledges and agrees that any of contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days, or will be subject to removal from the project.

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d. Contractor shall require all of its subcontractors to comply with the requirements of this Section and Section 292.675 RSMo.

The Missouri Department of Labor and Industrial Relations is charged with investigating claims of violations of Section 295.675, RSMo. §295.675.5, RSMo. If a violation is found, the contractor must forfeit to the public body \$2,500, plus \$100 for each employee, each day that the training has not been completed. Emergency rules for the enforcement of these provisions can be found at 15 CSR 60-15.010 through 15 CSR 60-15.050. The public body must provide notice of these penalties in the contract. Suggested language addressing this issue follows:

Section __. Notice of Penalties for Failure to Provide Safety Training

a. Pursuant to Section 292.675 RSMo, contractor shall forfeit to city as a penalty two thousand five hundred dollars

(\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by contractor or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section __ above.

b. The penalty described in Subsection a of this Section shall not begin to accrue until the time periods described in Sections __ b and c above have elapsed.

c. Violations of Section __ above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

Insert as subsection to payment section:

a. In the event that the Missouri Department of Labor and Industrial Relations has de-

termined that a violation of Section 292.675 RSMo, has occurred and that a penalty as described in Section __ shall be assessed, the city shall withhold and retain all sums and amounts due and owing when making payments to contractor under this contract.

If it becomes necessary to withhold the penalty for failure to provide safety training arises, one should consider the interplay between this requirement and the Prompt Payment Act, Section 34.057 RSMo. That section establishes an exception to the rule that all public works contracts must provide for prompt payment to the contractor by the public owner when a "citation by the enforcing authority for acts of the contractor or subcontractor that do not comply with any material provision of the contract and that result in a violation of any federal, state or local law, regulation or ordinance applicable to that project causing additional costs or damages to the owner."

For additional information, please visit the "One-Stop-Shop" on MML's Web site and click on "Immigration (HB1549)." The URL is: www.mocities.com/OneStopShop.htm. □

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Footnote

¹Defined in HB 390 (2009) as "any person entering into a contract with a public body for construction of public works which employs 'on-site employees' for purposes of completion of the contract." HB 390 also defines "on-site employees" as workers "employed by contractors and subcontractors to be directly engaged in constructions at the site of public works."

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