

SENATE BILL 40

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7; Title 12, Chapter 4 and Title 62,
relative to public works.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, is amended by adding the following as a new part:

12-4-1101.

As used in this part:

- (1) "Basic services agreement" means the standardized contract between a state agency and a designer for the design of a construction project;
- (2) "Designer" means a construction design professional under contract with, or selected by, a state agency for the design of a construction project; and
- (3) "State agency" means the University of Tennessee, the board of regents, or the state of Tennessee real estate and asset management division of the department of general services.

12-4-1102.

(a) A designer is entitled to additional compensation from a state agency for any industry standard and customary additional services provided to the state agency that are not included in, or reasonably inferred from, the terms of a basic services agreement.

(b) Except as otherwise provided in this subsection (b), as part of a solicitation, industry standard and customary additional services must not be included in the basic services provided by a designer under the terms of a basic services agreement prior to

the agreement being fully executed and signed. After the selection of a designer for the design of a construction project, and prior to the execution of a basic services agreement, a state agency and designer may negotiate in good faith for the inclusion of additional services in the basic services agreement that are not included in, or reasonably inferred from, the terms of the basic services agreement. If additional services are incorporated into a basic services agreement, the basic services agreement must specify the amount of compensation owed to the designer for the provision of additional services.

(c) If a state agency and designer have entered into a basic services agreement, and the state agency requires additional services of the designer that are not included in, or reasonably inferred from, the terms of the basic services agreement, the state agency may provide for the additional services at its own cost, contract with a third party to provide the additional services, or execute a written addendum to the basic services agreement with the designer authorizing the provision of the additional services by the designer. If a state agency executes a written addendum to a basic services agreement authorizing the provision of additional services by a designer under this subsection (c), the addendum must specify the amount of compensation owed to the designer for the provision of additional services.

12-4-1103.

(a) With respect to a basic services agreement:

(1) Building information modeling (BIM) deliverables categorized at a level of development (LOD) that is equal to or less than LOD 300, as specified by the American Institute of Architects (AIA), may be included in the basic services fee of a designer under a basic services agreement;

(2) Except as otherwise provided in this subdivision (a)(2), BIM deliverables categorized at an LOD that exceeds LOD 300, as specified by the AIA, must not be included in the basic services fee of a designer under the basic services agreement. If a state agency requires BIM deliverables categorized at

an LOD that exceeds LOD 300, the provision of such BIM deliverables by the designer is an additional service and the designer is entitled to additional compensation under § 12-4-1102(a);

(3) If a state agency requires additional embedded data in a model utilizing the Construction Operations Building Information Exchange or a similar format, regardless of whether the format is data-based or geometrically-based, the provision of such data by the designer is an additional service and the designer is entitled to additional compensation under § 12-4-1102(a);

(4) If a state agency requires a software license, the provision of each such license is a reimbursable expense of the designer;

(5) A designer is entitled to additional compensation from a state agency under § 12-4-1102(a) for any additional model development and enhancement during the construction phase;

(6) A designer is not entitled to additional compensation under § 12-4-1102(a) for typical as-built or post-construction documentation requirements; and

(7) A designer is entitled to additional compensation from a state agency under § 12-4-1102(a) for specific management or coordination requirements for a construction project, and such requirements may be negotiated on a project by project basis in accordance with §12-4-1102(b) or (c).

(b) If a designer provides BIM deliverables to a state agency under a basic services agreement or under an addendum to a basic services agreement, the BIM LOD provided by the designer must meet the current requirements of the AIA for that specific BIM LOD.

(c) A state agency shall review all terms and requirements of a basic services agreement or other contract for the design of a construction project prior to issuance of

the request for qualifications for the purpose of determining the potential cost impact that may be associated with unique modeling or data requirements relating to the design of the construction project.

12-4-1104.

If a contractual dispute arises between a designer and a state agency, either party may petition the secretary of state for a hearing before an administrative law judge. Not less than ten (10) days after receiving a petition, the secretary of state shall appoint an administrative law judge from the administrative procedures division of the office of the secretary of state. The administrative law judge shall schedule a hearing on the petition to be held not later than thirty (30) days after the appointment, unless the administrative law judge determines that a later date is necessary for good cause shown. The administrative law judge shall conduct the hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. An administrative law judge shall award reasonable costs and attorney's fees to a designer who prevails in a hearing conducted pursuant to this section.

SECTION 2. This act shall take effect July 1, 2017, the public welfare requiring it, and shall apply to any contract entered into or renewed on or after July 1, 2017.