

FIRST REGULAR SESSION

# SENATE BILL NO. 249

96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS McKENNA, GREEN, CALLAHAN, RICHARD, ENGLER AND SCHMITT.

Read 1st time February 9, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To amend chapter 67, RSMo, by adding thereto one new section relating to the political subdivision construction bidding standards act.

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

Section A. Chapter 67, RSMo, is amended by adding thereto one new section, to be known as section 67.314, to read as follows:

**67.314. 1. The provisions of this section shall apply to contracts for construction awarded by political subdivisions of the state of Missouri and shall be known as the "Political Subdivision Construction Bidding Standards Act". For purposes of this section, the term "contracts for construction" shall mean the construction, alteration, or repair of any structure, including but not limited to buildings, highways, bridges, streets, viaducts, water or sewer lines or systems, or pipelines, or demolition, moving, or excavation connected therewith, and shall include the furnishing of surveying, construction engineering, planning or management services, or labor, material, or equipment, as required to perform work under the contract for construction. Nothing in this section shall be construed to require the design or engineering of any project, as the term "project" is defined in section 8.287, to be awarded by competitive bidding if the contract for such services is under a separate contract from a contract for construction and is awarded under sections 8.285 to 8.291, or to construction management services governed by sections 8.675 to 8.687. Neither shall this section be construed to apply to contracts awarded for the "design/build" method of project delivery, if the political subdivision's procurement of "design/build" projects is otherwise authorized by law, local charter, ordinance, order, or resolution.**

22           **2. Except for the provisions of subsection 4 of this section, the**  
23 **provisions of this section shall not apply to any political subdivision**  
24 **required to advertise, solicit, award, and reject bids in compliance**  
25 **with:**

26           **(1) Other Missouri statutes, state rules, and federal and state**  
27 **funding requirements applicable to the specific political subdivision**  
28 **which are in effect on August 28, 2011, or as such requirements may be**  
29 **enacted or amended; or**

30           **(2) Any provision of a local charter, ordinance, order, resolution,**  
31 **or policy applicable to the specific political subdivision which is in**  
32 **effect or which is subsequently adopted by the political subdivision**  
33 **after August 28, 2011,**  
34 **as long as such state or local provisions require the political**  
35 **subdivision to meet equivalent or stricter competitive bidding**  
36 **requirements for construction as are contained in this section.**

37           **3. (1) A political subdivision shall comply with the following**  
38 **provisions when soliciting bids and awarding construction contracts of**  
39 **twenty-five thousand dollars, adjusted annually based on the rate of**  
40 **inflation according to the Consumer Price Index, or more:**

41           **(a) Contracts for construction shall be advertised in advance of**  
42 **the acceptance of bids. Such advertisements and bid solicitations shall**  
43 **include the name of the project, the deadline of submission of bids, and**  
44 **the time, date, and location where the bids for such project shall be**  
45 **received and opened. Bids shall be advertised through publication in**  
46 **a central repository developed by the office of administration at no cost**  
47 **to the state or shall be solicited by advertisement for a minimum of two**  
48 **days in one newspaper of general circulation in a county where the**  
49 **political subdivision is located, with the first advertisement for bids**  
50 **appearing in the newspaper at least thirty days in advance of the date**  
51 **stated in the advertisement for acceptance of bids. The office of**  
52 **administration shall develop procedures for bids to be placed in a**  
53 **central repository. Political subdivisions shall advertise in newspapers**  
54 **pursuant to this subdivision until the office of administration develops**  
55 **a central repository;**

56           **(b) The contract shall be awarded to the lowest and best bidder**  
57 **that submits a bid which is responsive to the contract as advertised by**  
58 **the political subdivision. The political subdivision may reject the low**

59 bidder by declaring the bidder ineligible for contract award based on  
60 the bidder's failure to provide a performance or payment bond as  
61 required by section 107.170, the bidder's nonperformance on previous  
62 contracts with the political subdivision, or other reasons specified as  
63 to the bidder's inability to adequately perform the contract.

64 (2) As used in this subsection, "Consumer Price Index" shall mean  
65 the Consumer Price Index for All Urban Consumers for the United  
66 States, or its successor index, as approved by the board of trustees, as  
67 such index is defined and officially reported by the United States  
68 Department of Labor, or its successor agency.

69 4. Notwithstanding any other provision of state law, state rule,  
70 or federal or state funding requirement to the contrary, or any  
71 provision of a charter, ordinance, order, resolution, or policy to the  
72 contrary, adopted by a political subdivision, no contract for  
73 construction shall be awarded in violation of the following  
74 requirements:

75 (1) No bid shall be opened in advance of the advertised deadline  
76 for submission of bids or in a place other than that specified in the  
77 original solicitation of bids or in an amendment to the solicitation  
78 communicated in advance to all known bidders;

79 (2) No bid shall be accepted unless it is sealed and is in writing.  
80 If the letting of the project for which bids were solicited is cancelled,  
81 bids shall be returned to the bidder unopened;

82 (3) No bid shall be accepted after the advertised deadline for  
83 acceptance of bids;

84 (4) All bids received shall be held secure and confidential from  
85 all persons until the bids are opened at the time and place announced  
86 by the political subdivision. Bids shall be opened in public.

87 Nothing in this section shall be construed to prohibit acceptance and  
88 processing of bids through an established program of electronic  
89 bidding by computer, provided bids accepted and processed  
90 electronically shall meet standards of confidentiality established by the  
91 requirements of the electronic bidding program which are comparable  
92 to requirements for written bids established by this section.

93 5. Any person submitting a bid shall have standing to seek  
94 equitable relief and monetary damages in a court of competent  
95 jurisdiction for monetary losses resulting from violations of subsection

96 4 of this section, including but not limited to, setting aside award of a  
97 contract, ordering a contract to be re-bid, requiring award of a contract  
98 to a different bidder than originally awarded, awarding monetary  
99 damages deemed appropriate by the court, including award of  
100 reasonable attorney's fees, or awarding a combination of such forms of  
101 relief, except that if the action is brought more than fifteen business  
102 days after the award of a contract, then the only remedy available is  
103 ordering the contract to be rebid.

104 6. Any person who would have submitted a bid except for failure  
105 of the political subdivision to advertise the contract pursuant to  
106 subdivision (1) of subsection 3 of this section shall have standing to  
107 seek equitable relief in a court of competent jurisdiction within fifteen  
108 business days of the date the political subdivision opened the bids for  
109 the contract, but the only remedy that may be imposed by the court is  
110 ordering the contract to be rebid.

111 7. Nothing in this section shall be construed to require  
112 acceptance of a bid which exceeds the amount estimated by the  
113 political subdivision for the contract. Neither shall anything in this  
114 section prohibit a political subdivision from awarding contracts  
115 without competitive bidding when the political subdivision deems it  
116 necessary to remove an immediate danger to the public health or  
117 safety, to prevent loss to public or private property which requires  
118 government action, or to prevent an interruption of or to restore an  
119 essential public service, however, the political subdivision shall  
120 produce a written public record documenting the need to contract for  
121 such services without competitive bidding.

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