

SECOND REGULAR SESSION

# SENATE BILL NO. 729

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR McKENNA.

Pre-filed January 4, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4025S.011

## AN ACT

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

*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 with:

25           (1) Other Missouri statutes, state rules, and federal and state  
26 funding requirements applicable to the specific political subdivision  
27 which are in effect on August 28, 2010, or as such requirements may be  
28 enacted or amended; or

29           (2) Any provision of a local charter, ordinance, order, resolution,  
30 or policy applicable to the specific political subdivision which is in  
31 effect or which is subsequently adopted by the political subdivision  
32 after August 28, 2010,

33 as long as such state or local provisions require the political  
34 subdivision to meet equivalent or stricter competitive bidding  
35 requirements for construction as are contained in this section.

36           3. A political subdivision shall comply with the following  
37 provisions when soliciting bids and awarding construction contracts of  
38 six thousand dollars or more:

39           (1) Contracts for construction shall be advertised in advance of  
40 the acceptance of bids. Such advertisements and bid solicitations shall  
41 include the name of the project, the deadline of submission of bids, and  
42 the time, date, and location where the bids for such project shall be  
43 received and opened. Bids shall be solicited by advertisement for a  
44 minimum of two days in one newspaper of general circulation in a  
45 county where the political subdivision is located, with the first  
46 advertisement for bids appearing in the newspaper at least thirty days  
47 in advance of the date stated in the advertisement for acceptance of  
48 bids. For contracts for construction of over one-hundred thousand  
49 dollars, bids shall also be advertised by providing project and bid  
50 solicitation information at least thirty days in advance of bid opening  
51 to one or more commercial or not-for-profit organization, which  
52 regularly provides information on contracts to be awarded to  
53 construction contractors;

54           (2) The contract shall be awarded to the lowest and best bidder  
55 that submits a bid which is responsive to the contract as advertised by  
56 the political subdivision. The political subdivision may reject the low  
57 bidder by declaring the bidder ineligible for contract award based on  
58 the bidder's failure to provide a performance or payment bond as

59 required by section 107.170, the bidder's nonperformance on previous  
60 contracts with the political subdivision, or other reasons specified as  
61 to the bidder's inability to adequately perform the contract.

62 4. Notwithstanding any other provision of state law, state rule,  
63 or federal or state funding requirement to the contrary, or any  
64 provision of a charter, ordinance, order, resolution, or policy to the  
65 contrary, adopted by a political subdivision, no contract for  
66 construction shall be awarded in violation of the following  
67 requirements:

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

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

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

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

80 Nothing in this section shall be construed to prohibit acceptance and  
81 processing of bids through an established program of electronic  
82 bidding by computer, provided bids accepted and processed  
83 electronically shall meet standards of confidentiality established by the  
84 requirements of the electronic bidding program which are comparable  
85 to requirements for written bids established by this section.

86 5. Any person submitting a bid, or who would have submitted a  
87 bid except for violations of subsection 4 of this section, shall have  
88 standing to seek equitable relief and monetary damages in a court of  
89 competent jurisdiction for monetary losses resulting from violations of  
90 subsection 4 of this section, including but not limited to, setting aside  
91 award of a contract, ordering a contract to be re-bid, requiring award  
92 of a contract to a different bidder than originally awarded, awarding  
93 monetary damages deemed appropriate by the court, including award  
94 of reasonable attorney's fees, or awarding a combination of such forms  
95 of relief.

96           **6. Nothing in this section shall be construed to require**  
97 **acceptance of a bid which exceeds the amount estimated by the**  
98 **political subdivision for the contract. Neither shall anything in this**  
99 **section prohibit a political subdivision from awarding contracts**  
100 **without competitive bidding when the political subdivision deems it**  
101 **necessary to remove an immediate danger to the public health or**  
102 **safety, to prevent loss to public or private property which requires**  
103 **government action, or to prevent an interruption of or to restore an**  
104 **essential public service, however, the political subdivision shall**  
105 **produce a written public record documenting the need to contract for**  
106 **such services without competitive bidding.**

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Bill

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