

SECOND REGULAR SESSION

SENATE BILL NO. 698

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RICHARD.

Read 1st time January 24, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5109S.011

AN ACT

To amend chapter 67, RSMo, by adding thereto one new section relating to construction contract bidding standards for political subdivisions.

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 certain contracts for construction awarded by political subdivisions of the state of Missouri and shall be known as the "Political Subdivision Construction Bidding Standards Act".

2. The purpose of this section is to require political subdivisions to competitively bid certain contracts for construction and to administer competitive bidding of construction contracts in a manner which protects the best interests of taxpayers and assures the integrity and fairness of the bid process.

3. (1) If a political subdivision is not subject to specific requirements for advertising, soliciting, awarding or rejecting bids for construction contracts by Missouri statutes or rules, federal or state funding requirements, or an established local construction procurement policy, the political subdivision shall comply with the minimum requirements of subsection 6 of this section when a construction contract requires an expenditure of twenty-five thousand dollars or more.

(2) If a political subdivision establishes a local construction procurement policy, the provisions of the policy shall meet the requirements of subsection 7 of this section.

(3) All political subdivisions shall comply with the requirements

22 of subsection 8 of this section when advertising, soliciting, or awarding
23 a construction contract that requires an expenditure of twenty-five
24 thousand dollars or more unless the requirements conflict with any
25 federal statute, regulation, or conditions of funding from the federal
26 government.

27 4. As used in this section, the following terms shall mean:

28 (1) "Construction contract", any contract for the construction or
29 alteration of a building, structure, highway, bridge, street, viaduct,
30 water or sewer line or system, or pipeline. The term shall also include
31 any contract, which is connected with the construction or alteration,
32 for demolition, moving, excavation, surveying, construction
33 engineering, planning, or management services, or the purchase of
34 labor, material, or equipment. The following shall not be deemed a
35 construction contract:

36 (a) The direct purchase by a political subdivision of products or
37 equipment from a vendor;

38 (b) A subcontract for, or direct purchase of, labor, materials, or
39 equipment by the person awarded the contract or by a subcontractor
40 of the contractor;

41 (c) The procurement of equipment, parts, or operating systems,
42 or the installation of such items, when specifications for the
43 procurement require a specific manufacturer to be compatible with
44 existing or new facilities at a power plant, wastewater or water
45 treatment facility, or other similar facility owned or operated by a
46 political subdivision, provided that award of a contract for such
47 purchases and installation without competitive bidding is not otherwise
48 prohibited by law;

49 (d) Contracts for the design or engineering of any project, as the
50 term "project" is defined in section 8.287, if the contract for such
51 services is under a separate contract from the construction contract
52 and is awarded under sections 8.285 to 8.291;

53 (e) Contracts for construction management services governed by
54 sections 8.675 to 8.687; and

55 (f) Contracts awarded by the design-build method of project
56 delivery if the political subdivision's procurement of design-build
57 projects is otherwise authorized by statute.

58 (2) "Established local construction procurement policy", a policy

59 and procedure for soliciting, awarding, and rejecting bids for
60 construction contracts that has been officially adopted by the
61 governing body of the political subdivision or established by the public
62 works director, engineer, or other official authorized by the political
63 subdivision to administer the award of construction contracts;

64 (3) "Political subdivision", any city, town, village, county or
65 special purpose district, including all units of local government
66 organized and operating under the laws of Missouri within local
67 geographic areas wholly or partly within the state of Missouri, and all
68 boards, commissions, divisions, departments, officers and agents of
69 such political subdivisions.

70 5. A political subdivision shall not divide a construction project
71 into component labor or material allocations for the purpose of
72 avoiding the provisions of this section.

73 6. If a political subdivision is not subject to a specific
74 requirement for advertising, soliciting, awarding, or rejecting bids for
75 construction contracts under Missouri statutes or rules, federal or state
76 funding requirements, or a local construction procurement policy, the
77 political subdivision shall comply with the following provisions when
78 the construction contract requires an expenditure of twenty-five
79 thousand dollars or more:

80 (1) Construction contracts shall be advertised in advance of the
81 acceptance of bids once a week for two consecutive weeks in a
82 newspaper of general circulation that is qualified under chapter 493
83 and located in a county where the political subdivision is located. If
84 there is no qualified newspaper in the county, then advertisements
85 shall be published in a qualified newspaper in an adjoining
86 county. The last publication of the advertisement shall not occur fewer
87 than ten days before the date stated in the advertisement for the
88 acceptance of bids. The advertisement shall state the date and time of
89 the deadline for the acceptance of bids, the place for submission of
90 bids, and the date, time, and place where bids will be opened;

91 (2) The contract shall be awarded to the lowest and best bidder
92 submitting a bid which is responsive to the contract as advertised by
93 the political subdivision. The political subdivision may reject the
94 lowest bidder by declaring the bidder ineligible based on the bidder's
95 failure to provide a performance or payment bond as required by

96 section 107.170, the bidder's nonperformance on previous contracts, or
97 for other specified reasons relating to the bidder's inability to
98 adequately perform the contract. Upon request, the reasons for the
99 rejection of any bid shall be stated in writing to the lowest bidder
100 within five business days of the rejection.

101 7. An established local construction procurement policy complies
102 with this section if it:

103 (1) Provides for advertising construction contracts in a manner
104 reasonably likely to inform potential bidders of the project on a timely
105 basis;

106 (2) Requires bids be advertised in a newspaper of general
107 circulation qualified under chapter 493;

108 (3) Requires that the date, time, and place for the submission of
109 bids and opening of bids be stated in the advertisement;

110 (4) States any requirements for the prequalification of bidders
111 and, if additional project-specific qualifications are established,
112 requires the advertisement of such qualifications before bids are
113 accepted; and

114 (5) States the bid award standard to be used in selecting
115 contractors;

116 (6) Does not allow for the award of a construction contract
117 without competitive bidding if the contract requires an expenditure of
118 twenty-five thousand dollars or more, unless the political subdivision
119 adopted a local construction procurement policy prior to January 1,
120 2012, that established a threshold greater than twenty-five thousand
121 dollars for when bids must be competitively bid. If the political
122 subdivision has such a policy, then the political subdivision can
123 continue to use the higher threshold.

124 8. Unless otherwise required by conditions of funding from the
125 federal government or a federal statute or regulation, no contract for
126 construction that requires an expenditure of twenty-five thousand
127 dollars or more shall be awarded by a political subdivision, nor shall
128 any local construction procurement policy include provisions, in
129 violation of the following requirements:

130 (1) No bid shall be opened, or contract awarded, in advance of
131 the advertised deadline for the submission of bids or in a place other
132 than that established in subdivision (4) of this subsection;

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

136 **(3) No bid shall be accepted after the advertised deadline for**
137 **acceptance of bids;**

138 **(4) All bids received shall be held securely and confidentially**
139 **until the bids are opened in public on the date and at the time and**
140 **place stated in the advertisement or in an amended advertisement. If**
141 **the date, time, or place of bid opening is changed from the information**
142 **that was stated in the original or amended advertisement, then notice**
143 **of the date, time, and place of bid opening shall be made to the general**
144 **public at least two business days in advance of the bid opening. Bids**
145 **shall be opened in public;**

146 **(5) No construction contract shall be awarded in violation of a**
147 **state statute or a political subdivision's established local construction**
148 **procurement policy;**

149 **(6) The political subdivision shall notify any person who has**
150 **prequalified for a specific project, or has registered and obtained plans**
151 **and specifications from the political subdivision or the political**
152 **subdivision's engineer for a specific project, regarding any changes to**
153 **the date, time, and place of the acceptance or opening of bids.**

154 **9. Nothing in this section shall be construed to prohibit a**
155 **political subdivision from electronically accepting and processing bids**
156 **through an established program of electronic bidding by computer,**
157 **provided bids accepted and processed electronically meet standards**
158 **that are comparable to the requirements for bids established by this**
159 **section.**

160 **10. Before or after a contract has been awarded, any person**
161 **submitting a bid for a construction contract and any person denied the**
162 **opportunity to fairly compete for a contract award due to violations of**
163 **this section may file an action for any violation of subsection 8 of this**
164 **section. Such person shall have standing to seek injunctive relief,**
165 **attorney's fees, and costs in a court of competent jurisdiction. If the**
166 **court determines, upon substantial evidence, that the political**
167 **subdivision has violated subsection 8 of this section, then the court may**
168 **order the contract to be rebid, or, if a contract has been awarded, order**

169 that the award be set aside and order the contract to be rebid. The
170 court may award reasonable attorney's fees upon a finding of violation.

171 11. An unintentional failure to meet the requirements of
172 subsection 8 of this section shall not constitute a violation if the court
173 finds:

174 (1) The contract was awarded through competitive bidding;

175 (2) Bids for the construction contract were advertised in a
176 newspaper of general circulation; and

177 (3) Bids were fairly solicited in substantial compliance with the
178 provisions of subsections 6 or 7 of this section.

179 12. (1) Within three days after the filing of an action under
180 subsection 10 of this section, the clerk of the court shall issue a
181 summons under applicable state law and applicable local or supreme
182 court rules. A copy of the petition shall be personally served upon the
183 defendant by a personal process server as provided by law or by any
184 sheriff. Such service of process shall be served at the earliest time and
185 shall take priority over service in other civil actions.

186 (2) Final disposition of an action under subsection 10 of this
187 section shall take place not more than forty-five days after the service
188 of such petition unless waived by the parties or for good cause shown.
189 Final disposition shall not include appellate review.

190 (3) Except as provided in subdivision (4) of this subsection, any
191 action under subsection 10 of this section that is brought more than
192 fifteen calendar days after the award of a contract shall be dismissed
193 by the court. For purposes of calculating the fifteen-day period, the
194 date of the contract award shall not be included. If the fifteenth day
195 falls on a Saturday, Sunday, or a legal holiday, then the action may be
196 brought by the end of the next day which is neither a Saturday,
197 Sunday, nor a legal holiday.

198 (4) If the court finds there has been fraud, collusion, or
199 corruption in the award of a construction contract, then an action
200 brought by a person pursuant to subsection 10 of this section shall not
201 be subject to the time limitation set forth in subdivision (3) of this
202 subsection. In the event that the court finds fraud, collusion, or
203 corruption in the award of the contract, then, in addition to the
204 remedies set out in subsection 10 of this section, the court may order

205 monetary damages or equitable relief for all injured parties as it deems
206 appropriate.

207 (5) If the court finds there is no substantial cause for the action
208 brought pursuant to subsection 10 of this section and determines that
209 the action was brought for purposes of harassment or disruption of the
210 awarded contract, the court may order the claimant to pay the political
211 subdivision's attorney's fees and award monetary damages resulting
212 from delays in the project.

213 (6) Any action brought under subsection 10 of this section shall
214 be heard by a court sitting without a jury. The final decision of the
215 court shall be affirmed, unless there is no substantial evidence to
216 support it, it is against the weight of the evidence, it erroneously
217 declares the law, or it erroneously applies the law. If more than one
218 person submitting bids on a contract brings an action pursuant to
219 subsection 10 of this section, the court shall adjudicate the actions
220 jointly under the time limits established under subdivision (2) of this
221 subsection.

222 13. Nothing in this section shall be construed to prohibit a
223 political subdivision from rejecting any and all bids, nor shall anything
224 in this section prohibit a political subdivision from awarding contracts
225 without competitive bidding when the political subdivision deems it
226 necessary to remove an immediate danger to the public health or
227 safety, to prevent a loss to public or private property which requires
228 government action, or to prevent an interruption of, or to restore, an
229 essential public service.

230 14. Nothing in this section shall be construed to prohibit a
231 political subdivision from adopting an established local construction
232 procurement policy governing construction contracts after August 28,
233 2012. This section shall not be construed to allow a political
234 subdivision to maintain or enact any provision governing construction
235 contracts in conflict with any state statute.

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