

House Substitute Amendment No _____
for

HOUSE _____ AMENDMENT NO. ____

Offered By

AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for
Senate Bill No. 605, Page 3, Section 48.030 by inserting after all of said Section the following:

“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".

2. As used in this section, the following terms mean:

(1) "Contracts for construction", the construction, alteration, or repair of any building,
structure, highway, bridge, street, viaduct, water or sewer line or system, pipeline, 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;

(2) "Established local construction procurement policy", a policy and procedure for use in
soliciting bids for multiple construction projects that has been officially adopted by the governing
body of the political subdivision or established by the public works director, engineer, or similar
official authorized by the political subdivision to administer the award of construction contracts.

3. 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 statute.

4. If a political subdivision is not subject to a specific requirement for advertising for bids
or soliciting, awarding, or rejecting bids under Missouri statutes or rules, or federal or state
funding requirements, and if the political subdivision has not adopted an established local
construction procurement policy that is applicable to the specific political subdivision regarding

1 contracts for construction, the political subdivision shall comply with the following provisions
2 when soliciting bids and awarding construction contracts of ten thousand dollars or more:

3 (1) Contracts for construction shall be advertised in advance of the acceptance of bids. If
4 no provision of Missouri statutes or rules, or federal or state funding requirements, or established
5 local construction procurement policy requiring advertising otherwise applies, bids shall be
6 solicited by advertisement once a week for two consecutive weeks in a newspaper of general
7 circulation, qualified under chapter 493, located in a county where the political subdivision is
8 located. If there is no newspaper in the county qualified under chapter 493, advertisements may
9 be placed in a newspaper in an adjoining county. The last insertion of the advertisement shall be
10 not less than ten days before the date stated in the advertisement for acceptance of bids. For
11 contracts for construction of over two hundred fifty thousand dollars, bids shall also be advertised
12 by providing project and bid solicitation information at least fifteen days in advance of bid
13 opening to one or more commercial or not-for-profit organization, which provides construction
14 project reporting services to construction contractors and suppliers, or that operates internet or
15 paper plan rooms for the use of contractors, subcontractors, and suppliers. Project advertisements
16 and bid solicitations shall state the date and time of the deadline for the acceptance of bids, the
17 place for submission of bids, and shall provide for informing bidders of the date, time, and place
18 where bids shall be opened;

19 (2) If no provision of Missouri statute or rules, or federal or state funding requirements, or
20 established local construction procurement policy otherwise applies, contracts for construction
21 shall be awarded in compliance with this subdivision. The contract shall be awarded to the lowest
22 qualified responsible bidder submitting a bid which is responsive to the contract as advertised by
23 the political subdivision. The political subdivision may reject the low bidder by declaring the
24 bidder ineligible for contract award based on the bidder's failure to provide a performance or
25 payment bond as required by section 107.170, the bidder's nonperformance on previous contracts
26 with the political subdivision, or for other reasons specified as to the bidder's inability to
27 adequately perform the contract. The reasons for bid rejection or award of the contract to another
28 bidder shall be stated in writing to the low bidder within five business days of the rejection of the
29 bid.

30 5. An established local construction procurement policy complies with this section if it
31 provides for advertising of construction contracts in a manner reasonably likely to inform
32 potential bidders of the project on a timely basis, including advertisement in a newspaper of
33 general circulation qualified under chapter 493, and requires that the date, time, and place for
34 submission of bids be stated in the advertisement or solicitation for bids and provides for
35 informing bidders of the date, time, and place bids will be opened. Such established local
36 construction procurement policy shall also state any requirements for prequalification of bidders.

1 If any additional project-specific qualifications are established, such qualifications shall be stated
2 to potential bidders in advance of submission of bids. The established local construction
3 procurement policy shall also state the bid award standard to be used in selecting contractors to
4 perform contracts under the policy.

5 6. In award of contracts for construction, a political subdivision is prohibited from acting
6 in an arbitrary or capricious manner, and shall act in good faith.

7 7. Notwithstanding any other provision of state law, state rule, or federal or state funding
8 requirement to the contrary or any provision of an established local construction procurement
9 policy, no contract for construction shall be awarded in violation of the following requirements:

10 (1) No bid shall be opened or contract awarded in advance of the advertised deadline for
11 submission of bids. No bid shall be opened in a place other than that established in subdivision
12 (4) of this subsection;

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

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

16 (4) All bids received shall be held secure and confidential from all persons until the bids
17 are opened on the date and at the time and place established in this section. Bids shall be opened
18 in a public meeting on the date and at the time and place stated in the advertisement and request
19 for bids or in an amended request for bids communicated to all known bidders or potential
20 bidders. If the date, time, or place of bid opening is changed from information stated in the
21 original or amended advertisement or solicitation for bids or other notice to bidders, notice of the
22 date, time, and place of bid opening shall be made to all known or potential bidders and the
23 general public at least two business days in advance of the bid opening. Bids shall be opened in a
24 public meeting. No political subdivision shall bar any person or persons from observing the bid
25 opening;

26 (5) No construction contract shall be awarded in substantial violation of a state statute or a
27 political subdivision's established local construction procurement policy;

28 (6) No construction contract shall be awarded in violation of section 107.170 requiring
29 performance and payment of bonds.

30 8. Nothing in this section shall be construed to prohibit acceptance and processing of bids
31 through an established program of electronic bidding by computer, provided bids accepted and
32 processed electronically shall meet standards established by the requirements of the electronic
33 bidding program which are comparable to requirements for written bids established by this
34 section.

35 9. Any person submitting a bid for a contract for construction may file an action for any
36 violation of subsection 6 or 7 of this section or sections 34.203 to 34.216, and shall have standing

1 to seek equitable relief and monetary damages in a court of competent jurisdiction for monetary
2 losses resulting from violations of subsection 6 or 7 of this section or section 34.203 to 34.216,
3 including but not limited to, setting aside award of a contract, ordering a contract to be rebid,
4 requiring award of a contract to a different bidder than originally awarded, awarding monetary
5 damages deemed appropriate by the court, including award of reasonable attorney's fees, or
6 awarding a combination of such forms of relief. If a person would have submitted a bid, except
7 for violation of subdivision (1) of subsection 7 of this section or sections 34.203 to 34.216, such
8 person shall have standing to pursue the rights and remedies provided by this subsection. Any
9 action for violation of subsection 6 or 7 of this section that is brought by the contractor more than
10 fifteen business days after the award of a contract shall be dismissed by the court. If the court
11 finds there has been fraud, collusion, or corruption, or if the court finds there have been violations
12 of subsection 6 or 7 of this section or sections 34.203 to 34.216 in award of the contract and
13 awards monetary damages or equitable relief to the contractor bringing the action, the court may
14 also award attorney's fees to the contractor bringing the action. If the court finds there is no
15 substantial cause for the action or determines that the action was brought by the contractor for
16 purposes of harassment or disruption of the awarded contract, the court may order the contractor
17 to pay the political subdivision's costs of attorney's fees.

18 10. Nothing in this section shall be construed to require acceptance of a bid which
19 exceeds the amount estimated by the political subdivision for the contract. Neither shall anything
20 in this section prohibit a political subdivision from awarding contracts without competitive
21 bidding when the political subdivision deems it necessary to remove an immediate danger to the
22 public health or safety, to prevent loss to public or private property which requires government
23 action, or to prevent an interruption of or to restore an essential public service.

24 11. Nothing in this section shall be construed to prohibit a political subdivision from
25 adopting an established local construction procurement policy governing contracts for
26 construction after the effective date of this section. Neither shall this section be construed to
27 allow a political subdivision to maintain or enact any provision governing construction contracts
28 in conflict with subsection 6 or 7 of this section or any state statute in effect on the effective date
29 of this section or as subsequently amended or enacted.”; and

30
31 Further amend said bill by amending the title, enacting clause, and intersectional references
32 accordingly.