

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 844**  
**95TH GENERAL ASSEMBLY**

4135L.05C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To amend chapters 34, 37, and 67, RSMo, by adding thereto four new sections relating to bidding processes.

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

Section A. Chapters 34, 37, and 67, RSMo, are amended by adding thereto four new sections, to be known as sections 34.047, 37.900, 67.314, and 1, to read as follows:

**34.047. 1. Notwithstanding any other provision of law to the contrary, the commissioner of administration shall give priority as the lowest and best bidder to any Missouri resident corporation with physical offices and employees located in this state, regardless of whether a corporation outside this state with no physical location or employees located within this state submits a bid that is determined to be the lowest and best bid.**

**2. Notwithstanding any other provision of law to the contrary, all letting of bids by the office of administration shall be based on a competitive bid process. All corporations bidding for work in this state shall be properly registered with the state to work in this state. All Missouri minority businesses and disabled veteran businesses shall be given priority in the determination of the lowest and best bid, as shall any cost-saving measures benefitting this state such as data repositories and "Go Green" programs.**

**37.900. 1. Any statewide elected official may request the office of administration to determine the lowest and best bidder with respect to any contract for purchasing, printing, or services for which the official has the authority to contract.**

**2. The official shall submit the original request for proposal and any pertinent information explaining the evaluation criteria established in the request and any additional information the official deems necessary.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

7           **3. The office of administration shall not be required to inquire of or negotiate with**  
8 **any offeror submitting a bid and shall only be required to reply to the elected official**  
9 **within forty-five days after the submission of the request by naming the offeror the office**  
10 **of administration determines to be the lowest and best bidder based on all submitted**  
11 **documents.**

**67.314. 1. The provisions of this section shall apply to contracts for construction**  
2 **awarded by political subdivisions of the state of Missouri and shall be known as the**  
3 **"Political Subdivision Construction Bidding Standards Act".**

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

5           **(1) "Contracts for construction", the construction, alteration, or repair of any**  
6 **building, structure, highway, bridge, street, viaduct, water or sewer line or system,**  
7 **pipeline, demolition, moving, or excavation connected therewith, and shall include the**  
8 **furnishing of surveying, construction engineering, planning or management services, or**  
9 **labor, material, or equipment, as required to perform work under the contract for**  
10 **construction;**

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

16           **3. Nothing in this section shall be construed to require the design or engineering**  
17 **of any project, as the term "project" is defined in section 8.287, to be awarded by**  
18 **competitive bidding if the contract for such services is under a separate contract from a**  
19 **contract for construction and is awarded under sections 8.285 to 8.291, or to construction**  
20 **management services governed by sections 8.675 to 8.687. Neither shall this section be**  
21 **construed to apply to contracts awarded for the design/build method of project delivery,**  
22 **if the political subdivision's procurement of design/build projects is otherwise authorized**  
23 **by law, local charter, ordinance, order, or resolution.**

24           **4. If a political subdivision is not subject to a specific requirement for advertising**  
25 **for bids or soliciting, awarding, or rejecting bids under Missouri statutes or rules, or**  
26 **federal or state funding requirements, and if the political subdivision has not adopted an**  
27 **established local construction procurement policy that is applicable to the specific political**  
28 **subdivision regarding contracts for construction, the political subdivision shall comply**  
29 **with the following provisions when soliciting bids and awarding construction contracts of**  
30 **ten thousand dollars or more:**

31           **(1) Contracts for construction shall be advertised in advance of the acceptance of**  
32 **bids. If no provision of Missouri statutes or rules, or federal or state funding requirements,**  
33 **or established local construction procurement policy requiring advertising otherwise**  
34 **applies, bids shall be solicited by advertisement once a week for two consecutive weeks in**  
35 **a newspaper of general circulation, qualified under chapter 493, located in a county where**  
36 **the political subdivision is located. If there is no newspaper in the county qualified under**  
37 **chapter 493, advertisements may be placed in a newspaper in an adjoining county. The**  
38 **last insertion of the advertisement shall be not less than ten days before the date stated in**  
39 **the advertisement for acceptance of bids. For contracts for construction of over two**  
40 **hundred fifty thousand dollars, bids shall also be advertised by providing project and bid**  
41 **solicitation information at least fifteen days in advance of bid opening to one or more**  
42 **commercial or not-for-profit organization, which provides construction project reporting**  
43 **services to construction contractors and suppliers, or that operates internet or paper plan**  
44 **rooms for the use of contractors, subcontractors, and suppliers. Project advertisements**  
45 **and bid solicitations shall state the date and time of the deadline for the acceptance of bids,**  
46 **the place for submission of bids, and shall provide for informing bidders of the date, time,**  
47 **and place where bids shall be opened;**

48           **(2) If no provision of Missouri statute or rules, or federal or state funding**  
49 **requirements, or established local construction procurement policy otherwise applies,**  
50 **contracts for construction shall be awarded in compliance with this subdivision. The**  
51 **contract shall be awarded to the lowest qualified responsible bidder submitting a bid which**  
52 **is responsive to the contract as advertised by the political subdivision. The political**  
53 **subdivision may reject the low bidder by declaring the bidder ineligible for contract award**  
54 **based on the bidder's failure to provide a performance or payment bond as required by**  
55 **section 107.170, the bidder's nonperformance on previous contracts with the political**  
56 **subdivision, or for other reasons specified as to the bidder's inability to adequately**  
57 **perform the contract. The reasons for bid rejection or award of the contract to another**  
58 **bidder shall be stated in writing to the low bidder within five business days of the rejection**  
59 **of the bid.**

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

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

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

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

78 **(1) No bid shall be opened in advance of the advertised deadline for submission of  
79 bids or in a place other than that established in subdivision (4) of this subsection;**

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

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

84 **(4) All bids received shall be held secure and confidential from all persons until the  
85 bids are opened on the date and at the time and place established in this section. Bids shall  
86 be opened in a public meeting on the date and at the time and place stated in the  
87 advertisement and request for bids or in an amended request for bids communicated to all  
88 known bidders or potential bidders. If the date, time, or place of bid opening is changed  
89 from information stated in the original or amended advertisement or solicitation for bids  
90 or other notice to bidders, notice of the date, time, and place of bid opening shall be made  
91 to all known or potential bidders and the general public at least two business days in  
92 advance of the bid opening. Bids shall be opened in a public meeting. No political  
93 subdivision shall bar any person or persons from observing the bid opening;**

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

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

98 **8. Nothing in this section shall be construed to prohibit acceptance and processing  
99 of bids through an established program of electronic bidding by computer, provided bids  
100 accepted and processed electronically shall meet standards established by the requirements  
101 of the electronic bidding program which are comparable to requirements for written bids  
102 established by this section.**

103           **9. Any person submitting a bid, or who would have submitted a bid except for**  
104 **violations of subsection 6 or 7 of this section or sections 34.203 to 34.216, shall have**  
105 **standing to seek equitable relief and monetary damages in a court of competent**  
106 **jurisdiction for monetary losses resulting from violations of subsection 6 or 7 of this section**  
107 **or section 34.203 to 34.216, including but not limited to, setting aside award of a contract,**  
108 **ordering a contract to be rebid, requiring award of a contract to a different bidder than**  
109 **originally awarded, awarding monetary damages deemed appropriate by the court,**  
110 **including award of reasonable attorney's fees, or awarding a combination of such forms**  
111 **of relief. Any action for violation of subsection 6 or 7 of this section that is brought by the**  
112 **contractor more than fifteen business days after the award of a contract shall be dismissed**  
113 **by the court. If the court finds there has been fraud, collusion, or corruption, or if the**  
114 **court finds there have been violations of subsection 6 or 7 of this section or sections 34.203**  
115 **to 34.216 in award of the contract and awards monetary damages or equitable relief to the**  
116 **contractor bringing the action, the court may also award attorney's fees to the contractor**  
117 **bringing the action. If the court finds there is no substantial cause for the action or**  
118 **determines that the action was brought by the contractor for purposes of harassment or**  
119 **disruption of the awarded contract, the court may order the contractor to pay the political**  
120 **subdivision's costs of attorney's fees.**

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

128           **11. Nothing in this section shall be construed to prohibit a political subdivision**  
129 **from adopting an established local construction procurement policy governing contracts**  
130 **for construction after the effective date of this section. Neither shall this section be**  
131 **construed to allow a political subdivision to maintain or enact any provision governing**  
132 **construction contracts in conflict with subsection 6 or 7 of this section or any state statute**  
133 **in effect on the effective date of this section or as subsequently amended or enacted.**

**Section 1. In any contract for purchasing supplies as defined in section 34.010 not**  
2 **exceeding the threshold for competitive bids set forth under section 34.040, the office of**  
3 **administration shall not prevent any department, office, board, commission, bureau,**  
4 **institution, political subdivision, or any other agency of the state from purchasing supplies**

5 from an authorized General Services Administration vendor including "GSA Advantage",  
6 "GSA e-Buy", or successor sources.

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