

FIRST REGULAR SESSION

# HOUSE BILL NO. 566

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DENISON (Sponsor), PARKINSON, COX,  
CAUTHORN AND SCHAD (Co-sponsors).

1526L.011

D. ADAM CRUMBLISS, Chief Clerk

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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  
2 known as section 67.314, to read as follows:

**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.**

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.

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 statute.**

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 or contract awarded in advance of the advertised**  
79 **deadline for submission of bids or in a place other than that established in subdivision (4)**  
80 **of this subsection;**

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

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

85             **(4) All bids received shall be held secure and confidential from all persons until the**  
86 **bids are opened on the date and at the time and place established in this section. Bids shall**  
87 **be opened in a public meeting on the date and at the time and place stated in the**

88 advertisement and request for bids or in an amended request for bids communicated to all  
89 known bidders or potential bidders. If the date, time, or place of bid opening is changed  
90 from information stated in the original or amended advertisement or solicitation for bids  
91 or other notice to bidders, notice of the date, time, and place of bid opening shall be made  
92 to all known or potential bidders and the general public at least two business days in  
93 advance of the bid opening. Bids shall be opened in a public meeting. No political  
94 subdivision shall bar any person or persons from observing the bid opening;

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

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

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

104 9. Any person submitting a bid for a contract for construction may file an action  
105 for any violation of subsection 6 or 7 of this section or sections 34.203 to 34.216, and shall  
106 have standing to seek equitable relief and monetary damages in a court of competent  
107 jurisdiction for monetary losses resulting from violations of subsection 6 or 7 of this section  
108 or section 34.203 to 34.216, including but not limited to, setting aside award of a contract,  
109 ordering a contract to be rebid, requiring award of a contract to a different bidder than  
110 originally awarded, awarding monetary damages deemed appropriate by the court,  
111 including award of reasonable attorney's fees, or awarding a combination of such forms  
112 of relief. If a person would have submitted a bid, except for violation of subdivision (1) of  
113 subsection 7 of this section or sections 34.203 to 34.216, such person shall have standing to  
114 pursue the rights and remedies provided by this subsection. Any action for violation of  
115 subsection 6 or 7 of this section that is brought by the contractor more than fifteen business  
116 days after the award of a contract shall be dismissed by the court. If the court finds there  
117 has been fraud, collusion, or corruption, or if the court finds there have been violations of  
118 subsection 6 or 7 of this section or sections 34.203 to 34.216 in award of the contract and  
119 awards monetary damages or equitable relief to the contractor bringing the action, the  
120 court may also award attorney's fees to the contractor bringing the action. If the court  
121 finds there is no substantial cause for the action or determines that the action was brought  
122 by the contractor for purposes of harassment or disruption of the awarded contract, the  
123 court may order the contractor to pay the political subdivision's costs of attorney's fees.

124           **10. Nothing in this section shall be construed to prohibit a political subdivision**  
125 **from rejecting any and all bids. Neither shall anything in this section prohibit a political**  
126 **subdivision from awarding contracts without competitive bidding when the political**  
127 **subdivision deems it necessary to remove an immediate danger to the public health or**  
128 **safety, to prevent loss to public or private property which requires government action, or**  
129 **to prevent an interruption of or to restore an essential public service.**

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