

# REFERENCE COPY

FILE: FEF-AP1  
Critical

**EXPLANATION:** CONSTRUCTION CONTRACTS BIDDING AND AWARDS (Soliciting Bids)

In *Lakeside Roofing Co. v. Nixon*, 2012 WL 709276 (March 5, 2012), the U.S. District Court for the Eastern District of Missouri found the state's excessive unemployment statute unconstitutional. MSBA is removing all references to this law.

The Missouri Department of Labor has created a document titled, "Missouri Public Work Check-Off List" (<http://www.labor.mo.gov/DLS/Forms/PW-5-AI.pdf>) that districts might find useful as they navigate the many state laws governing construction projects by public entities. MSBA has modified this procedure to comply with this document, including additional statutory requirements.

MSBA has clarified the prevailing wage requirements and added a requirement pertaining to bidders who are classified as "transient employers." A transient employer is an employer who is not domiciled in Missouri and who temporarily transacts business in the state, with some exceptions. State law requires transient employers to file financial assurances with the Department of Revenue and requires public entities, such as school districts, to verify compliance before work begins. Section 285.234, RSMo., sets out some specific notices that transient employers must post at a worksite. Contact the Department of Revenue at 573-751-0459 for a list of registered transient employers.

MSBA has also added the statutory obligation of contractors and subcontractors to notify the district if they receive a wage subsidy, bid supplement or rebate for employment on a public works project, as is required under § 290.095, RSMo.

<i>MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.</i>				
X	Board Secretary	X	Business Office	Coaches/Sponsors
	Facility Maintenance		Food Service	Gifted
	Human Resources		Principals	Library/Media Center
	Health Services		Counselor	Special Education
	Transportation		Public Info/Communications	Technology

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## CONSTRUCTION CONTRACTS BIDDING AND AWARDS (Soliciting Bids)

### Definitions

*Qualified Newspaper* – A newspaper that is published daily, triweekly, semiweekly or weekly; has been admitted to the post office as periodicals class matter in the city of publication; has been published regularly and consecutively for a period of three years; or is a successor newspaper. In first-class counties, a qualified newspaper also includes any newspaper deemed qualified in accordance with law.

*Newspaper of General Circulation* – A newspaper that has a diverse group of subscribers and contains news of a general character and interest to the community.

### Procedures

After authorization from the Board, the superintendent or designee will publish notice of construction projects in excess of \$15,000 in a qualified newspaper of general circulation located in the city where the district is located or, if there is no such newspaper, in a newspaper of general circulation in the county. If there is no such newspaper in the county where the district is located, the bids may be published in an adjoining county.

The district may place notice in any of the following qualified newspapers: \_\_\_\_\_

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Notice will appear once a week for two consecutive weeks. The published notice will contain:

1. The district's legal name.
2. Contact information of the individual authorized to respond to questions.
3. A statement that bids are being solicited.
4. A description of the project or services for which bids are being solicited.
5. Directions regarding how to obtain bid specifications.
6. The date, time and place for receipt of bids.

Bid specifications will include:

1. Any bid deposit, performance bond or security requirement.
2. ~~A prevailing wage statement.~~ Notice that the contractor must follow all provisions of the prevailing wage law and pay at least the prevailing hourly rate of wages, as set out in the wage order, to all workers performing work under the contract. Contractors who do not comply with the law will forfeit a penalty to the district of \$100 per calendar day (or portion of a day) for each worker who is paid less than the prevailing rate for any work done under the contract by the contractor or by any subcontractor. Contractors and subcontractors will be required to complete an affidavit of compliance prior to final payment.
3. Any pre-qualification requirements.
4. The date, time and place of any pre-bidding meeting and whether attendance is required.
5. A statement of the district's position on nonconforming bids.
6. The date, time and place for opening of bids.
7. A statement that all bids must be submitted in writing and sealed.
8. A statement that the Board has the right to reject any and all bids.
9. Notice that all contractors and subcontractors must provide on-site workers a ten-hour program in construction safety and health approved by the Occupational Safety and Health Administration (OSHA) or a similar program approved by the Missouri Department of Labor and Industrial Relations (DOLIR) that is at least as stringent as the OSHA program or have documentation that the workers have previously completed the required program. Bid specifications will also include notice that failure to comply with the law will result in a penalty in the amount of \$2,500 plus \$100 per employee for each calendar day (or portion of a day) the employee is employed without the required training.
10. Notice that all bidders for contracts that may exceed \$5,000 must provide a sworn affidavit and supporting documentation that affirms the bidder's participation in a federal work authorization program as well as an affidavit that the bidder does not knowingly employ any person who is an unauthorized alien who will be working on the project bid. A contractor is only required to provide the affidavits to the district on an annual basis.
11. ~~When applicable due to excessive unemployment in the state, notice that contractors may only utilize Missouri laborers and laborers from nonrestrictive states, unless such laborers~~

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are not available or are incapable of performing the work involved, as certified by the contractor. Nonrestrictive states are those states that have not passed laws restricting Missouri laborers from working on public projects in their states. Notice that "transient employers" as defined in § 285.230, RSMo., must file a financial assurance instrument with the director of revenue and provide proof of compliance to the district before work begins, or otherwise provide financial security to the district as required by law. Once work begins, a transient employer must post in a prominent and easily accessible place at the worksite a clearly legible copy of:

- ▶ The notice of registration for employer withholding issued to the transient employer by the director of revenue.
- ▶ Proof of coverage for workers' compensation insurance or self-insurance signed by the transient employer and verified by the Department of Revenue through the records of the Division of Workers' Compensation.
- ▶ The notice of registration for unemployment security.

Bid specifications will also state that any transient employer failing to comply with these requirements will be liable for a penalty of \$500 per day until the notices required by this section are posted as required by statute. Contractors utilizing transient employers as subcontractors are required to ensure that the subcontractors are complying with state statute.

Contractors and subcontractors are required to report to the district the date and amount of any wage subsidy, bid supplement or rebate for employment on a public works project received within 30 calendar days of receipt of payment, as required by state law. Such subsidies, supplements or rebates are prohibited if they reduce the wage rate below the prevailing wage rate. Contractors and subcontractors who do not comply will owe the district a penalty as required by law.

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**Note:** *The reader is encouraged to review policies and/or forms for related information in this administrative area.*

Implemented: FIELD(AdoptDate)

Revised:

FIELD(DistrictLocationLine)