

Missouri OA Removes Public Access to Procurement Materials, Complicating Bid Protest Analysis

Alert

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Last month, the Missouri Office of Administration (OA) posted notices to the [MissouriBUYS website](#) and OA's [bid document portal](#) announcing that the agency will be restricting public access to bid documents to avoid running afoul of a new statute called the [Missouri Personal Privacy Protection Act](#). Under the [Sunshine Law](#), bid documents—with certain exceptions to protect trade secrets—typically become open records once a contract is awarded. Nonetheless, OA announced that:

- As of August 28, 2022, all bid and contract records will be removed from MissouriBUYS and OA's document portal.
- New contract awards will be reviewed and redacted to ensure compliance with the Act before OA posts them to the aforementioned websites.
- Older records will similarly be reviewed and redacted before being reposted.
- As of August 28, 2022, “public access to the contract documents as well as the specific contract information for contractors will be removed from the MissouriBUYS Contract Board.”
- Individuals may submit Sunshine requests to obtain bid or contract documents that are unavailable online.

Prospective vendors routinely use the bid document portal to analyze awarded bids, particularly to decide whether to file a bid protest. OA's new policy will make bid protests much more difficult because OA regulations require that bid protests be filed within 10 days of a notice of award. This is of particular concern, as OA has increasingly argued in bid protest litigation (albeit with mixed success) that a bidder's failure to raise an issue in its bid protest precludes the bidder from raising it on appeal in Circuit Court. Without access to the bid documents, it will be extremely difficult to prepare a bid protest that identifies all

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of the bid practices a vendor wishes to challenge.

While OA forecast its concerns to the legislature in the spring, its reaction is somewhat extreme. The Act was intended to bar government agencies from requiring 501(c) entities to disclose their donors, supporters, and volunteers, and to prohibit agencies from disclosing such information that comes into their possession. The Act regulates public agencies' ability to disclose, or require submission of, "personal information" which "directly or indirectly identifies a person as" a member, supporter, or volunteer of—or donor to—any 501(c) organization.

The Act covers only limited information about 501(c) organizations. A substantial number of procurements do not involve any bidders who are 501(c) organizations. It is also unclear why such organizations would submit documents that would identify a donor, member, or supporter of their organization as part of their bid.

Hopefully OA will address this situation soon as to future bids. The agency already has a process for vendors to designate trade secret information as a closed record once bids are unsealed. And, since the Act prohibits agencies from requiring submission of personal information in the first place, submission of such information should be rare.

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