

HOUSE BILL No. 2119

AN ACT concerning public bodies; relating to procurement procedures used thereby; relating to bids and bidding; amending K.S.A. 19-2881 and K.S.A. 2000 Supp. 10-106 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The director of purchases shall conduct a pilot study utilizing the reverse auctioning electronic procurement process for the purchase of selected goods or materials for one or more state agencies in accordance with this section. The director of purchases shall adopt policies and procedures for such pilot project in accordance with and subject to the provisions of this section.

(b) The provisions of K.S.A. 75-430, and amendments thereto, relating to advertisements in the Kansas register and the provisions of K.S.A. 75-3739 *et seq.*, and amendments thereto, regarding procedures for sealed bidding and the opening of bids shall not apply to bids or purchases conducted under the pilot project utilizing the reverse auctioning electronic procurement process in accordance with this section. All bids submitted under the pilot project utilizing the reverse auctioning electronic procurement process in accordance with this section shall be subject to the open records act.

(c) Reverse auctioning shall not be used for the acquisition of any services for construction projects or for the acquisition of any other services.

(d) On or before January 15, 2002, and each six months thereafter, the director of purchases shall submit a written report to the secretary of the legislative coordinating council, the secretary of the senate and the chief clerk of the house of representatives on the activities and results of the pilot project utilizing the reverse auctioning electronic procurement process under this section and make recommendations whether or not the authority to use such procurement process should be continued beyond June 30, 2003. The director of purchases also shall notify each member of the legislature of the availability of copies of such report.

(e) Each year, the legislative post auditor shall conduct a performance audit of the pilot project utilizing the reverse auctioning electronic procurement process under this section and the activities of the division of purchases in relation to such pilot project. In conducting such audit, the post auditor shall include a determination of the applicable factors specified in subsection (b) of K.S.A. 74-7287, and amendments thereto, and such other factors as may be directed by the legislative post audit committee. Such audit shall be conducted as soon after the close of the fiscal year as practicable. Upon completion of such audit, the legislative post audit committee shall review and accept such report.

(f) As used in this section, "reverse auctioning" means a procurement process following procedures approved by the director of purchases where bidders are invited to bid on specific goods through real-time electronic bidding, with the award being made to the lowest responsible and responsive bidder; during the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for the bid opening.

(g) The provisions of this section shall expire June 30, 2003.

New Sec. 2. (a) The secretary of transportation is hereby authorized to implement electronic submission of sealed bids as a procurement process accessible by highway construction contractors and other qualified contractors for highway projects. Prior to implementing such procurement process, the secretary of transportation shall adopt any policies and procedures which are necessary for the acceptance of sealed bids by electronic on-line submission.

The secretary of transportation may adopt any rules and regulations necessary to implement the provisions of this section.

(b) The secretary of transportation shall not acquire any goods or services through any process of reverse auctioning.

(c) As used in this section, "sealed bids" may include a procurement process following procedures approved by the secretary of transportation in which bids are received electronically over the internet.

Sec. 3. K.S.A. 2000 Supp. 10-106 is hereby amended to read as follows: 10-106. (a) Municipal bonds shall be sold at public *notice* sale as follows: The officers having charge of the sale of the bonds shall publish a notice of the sale one time in a newspaper having general circulation in

the county where the bonds are issued and in the Kansas register. Such notices shall be published not less than six days nor more than 30 days before the sale and shall contain the following information: (1) Except as provided by subsection (b), the date, time and place at which a public *notice* auction will be held *on such terms and conditions as shall be provided by the municipality* or at which ~~written~~ bids will be received and considered for the sale of the bonds for cash at such price as the municipality may accept; (2) the date of issue, total par value and denomination of the bonds being sold; (3) the dates and amounts of maturities of the bond issues; (4) the dates on which interest on the bonds shall become due and payable; (5) the place or places where and the approximate date on which the bonds being sold will be delivered to the purchaser; (6) a statement that a good faith deposit in the form of a certified or cashier's check or surety bond in the amount of 2% of the total par value of the bonds being sold ~~shall accompany each bid or in the case of public sale at auction the same~~ shall be furnished *at or prior to the time of sale* by each bidder; (7) a statement disclosing whether or not the purchaser of the bonds will be required to pay for the printing thereof and whether or not and to what extent the purchaser of the bonds will be required to pay the expense of legal services rendered to the municipality in connection with the issuance of the bonds including the fees of recognized bond counsel for an opinion as to legality of issuance; (8) the assessed valuation of the municipality; (9) *that bidders may be required to be qualified in a manner established by the municipality before submitting a bid*; and ~~(9)~~ (10) the total bonded indebtedness of the municipality as of the date on which the bonds being sold are dated including the bonds submitted for bid. The rate of interest may be omitted in advertising and the bidders requested to specify the lowest interest rate or rates on the bonds at which they will pay the purchase price.

If sold at public *notice* sale ~~with written bids~~, purchasers shall submit their bids in writing, sealed or sent by telefacsimile or other electronic transmission, as set forth in the notice of sale, for all or any part of the bonds. ~~Each bid shall be accompanied by a certified or cashier's check or surety bond for 2% of the total amount of the bid.~~ In case any purchaser, whose bid is accepted, fails to carry out the contract, the deposit shall be forfeited to the municipality issuing the bonds. ~~Written~~ Bids shall be disclosed publicly and tabulated or compared only at the time and place specified in the notice. At the time and place specified, the bonds shall be sold to the highest and best bidder or bidders, and the bonds may be allotted among the bidders, however, any or all bids may be rejected. No contract for the sale of the bonds shall be made except on bids submitted as provided in this section. No bonds shall be delivered to any purchaser until the amount of the bid is placed in the hands of the officer in charge of the sale. The provisions of this section relating to ~~the~~ public *notice* sale of bonds shall not apply to bonds secured solely and only by revenues, bonds sold, pursuant to written agreement, to the government of the United States of America or any bureau, department, instrumentality or agency thereof, bonds issued pursuant to K.S.A. 10-427 *et seq.*, and amendments thereto, and all bonds of the same series or which are issued simultaneously with such bonds and bond sales where the total amount of the issue does not exceed \$100,000. In such cases, the bonds may be sold at public *notice* or private sale as the officers having charge of the sale of such bonds determine. The practice of providing more than one issue within a twelve-month period for any one project is prohibited unless the project engineer or architect certifies that it is necessary to do so for the orderly construction progress of the project.

(b) As an alternative to providing notice of the date, time and place of public *notice* auction or receipt of bids provided by subsection (a)(1), the officers having charge of a bond sale may establish a time period of not less than seven nor more than 30 days during which such bonds would be sold. Notice of such sale period shall be published one time in a newspaper having general circulation in the county where the bonds are issued and in the Kansas register and shall be published not less than six days nor more than 30 days before the beginning date of the sale period. The notice shall contain the information specified in subsection (a) except that in place of the time and date of sale, the notice shall specify the time period during which the bonds would be sold and the manner in which persons interested in submitting a bid may register for notice of the bond

sale. At least three business days prior to the time and date of the bond sale, the officers having charge of the sale shall give notice to all persons having registered for notice of the bond sale, and bids shall be submitted and received and the sale made in the manner provided in subsection (a).

Sec. 4. K.S.A. 19-2881 is hereby amended to read as follows: 19-2881. (a) Before the board of any park district created under K.S.A. 19-2859 to 19-2880, inclusive, and amendments thereto, shall let any contract for any improvement which is estimated to exceed ~~\$10,000~~ \$20,000, the board shall cause accurate detailed plans and specifications therefor, together with a detailed estimate, of the cost of same, to be made and filed in the office of the secretary of such board. Before letting such contract, the board shall advertise for bids to do such work in accordance with such plans and specifications for at least one week in a newspaper of general circulation in such district. Except as provided by subsection (b), the purchase of materials, contracts for purchase or sale, lease contracts and other contractual services which are estimated to exceed ~~\$10,000~~ \$20,000, shall be made upon competitive bids.

All bids shall be made in writing and signed by the bidder, ~~and presented.~~ *All bids shall be submitted or delivered by the bidder, or the bidder's agent or attorney, to the board, at a meeting thereof, and or to a designated representative of the board as specified in the bid notice. The proceedings to open and consider bids shall be conducted at a time and place specified in the bid notice. Such proceedings shall be open to the public.* All bids shall be ~~considered and~~ accepted or rejected ~~immediately after their submission by the board at a meeting thereof within 30 days of the opening of the bids.~~ The board may reject any bids and shall not accept a bid in excess of the estimated cost of the work, and a contract let at a price in excess of the estimated cost of the work shall be void.

(b) The district may enter into agreements with any public agency for the purchase of materials, contracts for purchase or sale, lease contracts and other contractual services through such governmental units using the bidding procedure of such public agency.

(c) When used in this section, "public agency" means any state or a political or taxing subdivision thereof.

Sec. 5. K.S.A. 19-2881 and K.S.A. 2000 Supp. 10-106 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.