

SENATE BILL No. 481

AN ACT concerning electronic procedures, records, transactions and signatures; relating to electronic and digital signatures; electronic procurement procedures for certain governmental entities; amending K.S.A. 2001 Supp. 16-1605, 72-6760 and 75-3739a and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 75-3739a is hereby amended to read as follows: 75-3739a. (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~~ *On or before January 15, 2003, and on or before January 15, 2004,* 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~~ *standing committee on commerce of the senate and the standing committee on e-government* 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~~ *2004*. The director of purchases also shall notify each *remaining* member of the legislature of the availability of copies of such report. *The report shall be made by the director by publishing such report on the internet and by notifying each member that the report is available and providing, as part of such notice, the uniform resource locator (URL) at which such report is available.*

~~(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)~~ (e) 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)~~ (f) The provisions of this section shall expire June 30, ~~2003~~ *2004*.

Sec. 2. K.S.A. 2001 Supp. 72-6760 is hereby amended to read as follows: 72-6760. (a) *Except as provided by this section and section 3,* no expenditure involving an amount greater than \$10,000 for construction, reconstruction or remodeling or for the purchase of materials, goods or wares shall be made by the board of education of any school district except upon sealed proposals, and to the lowest responsible bidder.

(b) The provisions of subsection (a) do not apply to expenditures by a board of education for the purchase of:

- (1) Services;
- (2) products required to be purchased under the provisions of K.S.A. 75-3317 through 75-3322, and amendments thereto;

(3) educational materials directly related to curriculum and secured by copyright;

(4) motor fuels required to provide or furnish transportation;

(5) perishable foods and foodstuffs required for operation of a school lunch program;

(6) articles or products that are produced, manufactured or provided by inmates under the prison-made goods act of Kansas;

(7) natural gas that will be consumed in buildings owned or operated by the school district;

(8) materials, goods or wares required for reconstructing, remodeling, repairing or equipping buildings when such purchase has been necessitated by the occurrence of a loss against which the board of education has purchased property or casualty insurance; and

(9) materials, goods or wares which are purchased:

(A) From vendors who have entered into contracts with the state director of purchases pursuant to state purchasing statutes for purchases by state agencies; and

(B) under the same pricing provisions established in the state contracts, subject to agreement of the vendor to honor the state contract prices.

(c) Whenever the board of education of any school district lets bids for the purchase of materials, goods or wares and bids are submitted by bidders domiciled within the school district and by bidders domiciled outside the school district and the low bid is submitted by a bidder domiciled outside the school district, the school district domiciliary which submitted the lowest bid may be deemed the preferred bidder and awarded the bid if:

(1) The quality, suitability and usability of the materials, goods or wares are equal;

(2) the amount of the bid of the school district domiciliary is not more than 1% greater than the amount of the low bid; and

(3) the school district domiciliary agrees to meet the low bid by filing a written agreement to that effect within 72 hours after receiving notification of being deemed the preferred bidder.

(d) The provisions of subsection (c) do not apply to expenditures for construction, reconstruction or remodeling.

New Sec. 3. (a) The state board of education shall allow every school district to participate in a reverse auctioning electronic procurement process and on-line bidding process. The state board of education shall develop guidelines and procedures for those school districts choosing to use these procurement processes.

(b) The school board of any school district desiring to utilize on-line bidding or reverse auctioning must first conduct a public hearing to determine whether or not the administration of that school district will utilize such procedures for purchasing services, materials, goods or wares.

(c) Whenever the board of education of any school district is required to accept bids prior to the expenditure of money to purchase materials, goods or wares or whenever the board chooses to request the submission of bids prior to the expenditure of money to purchase materials, goods or wares, the board may conduct a reverse auctioning electronic procurement process for the purchase of such, materials, goods or wares.

(d) Whenever the board of education of any school district is required to accept bids prior to the expenditure of money to purchase services, materials, goods or wares or whenever the board chooses to request the submission of bids prior to the expenditure of money to purchase services, materials, goods or wares, the board may conduct an on-line bidding process for the purchase of such services, materials, goods or wares.

(e) If a school district utilizes a reverse auctioning electronic process or an on-line bidding process authorized by this section, the provisions of any law requiring procedures for sealed bidding and the opening of bids shall not apply to such purchases.

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

(g) On or before January 15, 2003, and January 15, 2004, the board of education of a school district which utilizes a reverse auctioning electronic process or an on-line bidding process authorized by this section,

shall submit a written report to the state board of education. The report shall include a comparison of the final pricing offered, the percentage in the increase or decrease or the number of bidders participating in the bidding, the number of bidders outside the state of Kansas, the number of bid protests and any other information deemed appropriate by the state board of education.

(h) As used in this section:

(1) “Reverse auctioning” means a procurement process of where bidders are invited to bid on specific materials, goods or wares 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; and

(2) “on-line bidding” means a procurement process in which a school district electronically receives bids for services, materials, goods or wares in a competitive bidding event.

(g) The provisions of this section shall expire on June 30, 2004.

Sec. 4. K.S.A. 2001 Supp. 16-1605 is hereby amended to read as follows: 16-1605. (a) This act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) This act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this act of the words “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

(f) ~~This~~ *The uniform electronic transactions act does not require any person to use or permit the use of electronic or digital signatures.*

(g) ~~Any agency may adopt rules and regulations governing the agency’s use of digital signatures as long as the rules and regulations meet or exceed those adopted by the secretary.~~ *Any state agency that offers or provides the option of using an electronic signature to persons doing business with that state agency shall establish written standards governing the use of those electronic signatures as follows:*

(1) *On or before December 31, 2002, for electronic signature applications that are in use by the state agency before July 1, 2002; or*

(2) *before offering or providing the option of using an electronic signature for any applications implemented on or after July 1, 2002.*

(h) *The uniform electronic transactions act does not require any person to use or permit the use of digital signatures.*

(i) *The secretary of state shall adopt rules and regulations governing the use of digital signatures by state agencies. Each state agency offering or providing the option of using a digital signature to persons doing business with that state agency shall implement digital signatures in a manner consistent with the regulations of the secretary of state, except that the state agency may adopt rules and regulations governing that agency’s use of digital signatures that exceed the minimum standards established by the rules and regulations of the secretary of state.*

Sec. 5. K.S.A. 2001 Supp. 16-1605, 72-6760 and 75-3739a are hereby repealed.

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

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

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.